S. HRG. 102-86, PT. 1

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

HEARINGS

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

H.R. 2608

AN ACT MAKING APPROPRIATIONS FOR THE DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES FOR THE FISCAL YEAR ENDING SEPTEMBER 30, 1992, AND FOR OTHER PURPOSES

Part 1 (Pages 1-611)

Department of Commerce
Department of Transportation
Federal Communications Commission
Federal Trade Commission
Legal Services Corporation
Securities and Exchange Commission
Small Business Administration
The judiciary

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DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

FRIDAY, FEBRUARY 22, 1991

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:05 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Inouye, Rudman, and Kasten.

DEPARTMENT OF TRANSPORTATION

MARITIME ADMINISTRATION

STATEMENT OF CAPT. WARREN G. LEBACK, MARITIME ADMINISTRATOR

ACCOMPANIED BY EARNEST HAWKINS, ASSOCIATE ADMINISTRATOR

OPENING REMARKS

Senator HOLLINGS. The subcommittee will come to order. Today, we will hear from the Maritime Administration and then from the Securities and Exchange Commission.

Before beginning, I would like to note Warren Kane's absence. I think the record ought to show that.

This is my 25th year, and it is the first time in 22 without him, but then I borrowed this new clerk—Scott Gudes—from you.

Senator INOUYE. He is a good man.

Senator HOLLINGS. You trained him?

Senator INOUYE. That is right.

Senator HOLLINGS. You don't think I have brought a mole into the subcommittee?

Senator INOUYE. How do you know? [Laughter.]

BUDGET REQUEST

Senator HOLLINGS. Before beginning with MarAd, I would like to make a few observations about the overall appropriations bill. The fiscal year 1992 President's request for State, Justice, Commerce is $21.3 billion in budget authority, $21 billion in outlays. That is 12.9 percent and 8.9 percent respectively above this year's budget.

This new budget agreement, however, really divides the Government, and divides this bill, into three separate parts: Domestic, international, and defense. For domestic agencies, the budget is filled with both good news and bad. For some, like Justice and the judiciary, the President has proposed significant increases.

The bad news is that he has proposed to finance those increases with cutbacks in other domestic agencies like Commerce and SBA. The administration again has proposed the same old list of program cutbacks and terminations, such as the EDA, NOAA, fisheries, and public telecommunications. And those are the ones we have had proposed now for 10 years running for elimination. Republicans, Democrats, both sides in a bipartisan move, have rejected those particular suggestions.

For the State Department, which the budget deal protects under a separate international pot, the news is all good. The President is requesting a 23-percent increase. So if a water and sewer project for economic development is proposed overseas then the administration says, "That is foreign aid and it is protected under the budget agreement" but if that same water and sewer project is proposed here in the United States, then it is labeled domestic discretionary funding and called by the administration wasteful.

I oppose this budget deal because it simply increases the deficit to over $379 billion at the present time, without Desert Storm, while it also significantly impinges on the prerogatives of the Appropriations Committee and the Congress to set priorities and make tradeoffs between Federal programs. However, the deal was enacted into law, and it sets the rules under which we must now operate.

We need only turn to Captain Leback's agency, MarAd, to see the agreement's impact. All aspects of our Nation's maritime industry are critically important to national security. But MarAd has been cut in two. The MarAd has a Ready Reserve Force program of $225 million that the agreement puts in the national defense pot.

He has a national defense reserve fleet and an agency operation budget of $73 million considered to be in the domestic pot. Captain Leback cannot tap the Ready Reserve Force to fund critical MarAd operations or to educate academy midshipmen that man those RRF ships or to maintain the national defense reserve fleet. And the committee cannot make tradeoffs between the two parts of the agency.

Captain, we are pleased to have you here today. It has been too long since we have heard from MarAd. Your agency is heavily involved in Operation Desert Storm, and your ships are moving critically needed weapons and supplies to the Persian Gulf. As you know, long before the budget agreement set these caps, Senator Rudman and I fought with the full committee to ensure that both MarAd and the Ready Reserve Force were fully funded.

ROLE IN OPERATION DESERT STORM

We look forward to hearing from you on the MarAd's role in Operation Desert Storm and I, by way of emphasis, can state really from the Air Force end of it, where we are flying every C–141 as that goes out, and has been going out since August under MAC and General Johnson from the Charleston Air Force Base around the clock, Labor Day, Thanksgiving, Christmas. I was there New Year's morning again, and we have got what we call Desert Express. They can take off at 12:30. It used to be 1 o'clock. It is now several planes. They just swap crews in New Jersey, Spain, and land 17 hours later in Dhahran. That is how we got the Patriot missiles so quickly to Israel, and as fine a job as we are doing working around the clock.

It did not start on day 37 something or whatever they are talking about. These fellows have been going for months on end, and women too, not just fellows. I can tell you, they are having to repair these planes, and they have got the finest mechanics out there working night and day in the rain and cold. They are the first to tell you, "We need better ships and better sealift," because they cannot possibly do it all by airlift. You have got to depend on MarAd.

Let me yield to our distinguished senior Senator, Senator Inouye.

Senator INOUYE. Mr. Chairman, I thank you very much. I am pleased that MarAd is here this morning. I am also pleased that we will be touching upon MarAd's involvement in Desert Storm, because this Nation has been literally deadended with an avalanche of desert news, and you almost never hear about the activities of the merchant mariners; you never hear on the activities of those ships that have to go through mine fields and deliver the goods that make the execution of this mission possible.

Most Americans don't realize that the hospital ship, for example, is being manned by merchant marine people; they are not Navy personnel, but they won't get the recognition like the others who are in uniform.

So I hope that through this hearing we can get some publicity for those men and women who are serving us in a different way but in, nevertheless, an important way, in a way that requires them to stand in harm's way. So, Mr. Chairman, I commend you for calling this hearing.

Senator HOLLINGS. Thank you, sir.

Captain, you may proceed, please.

SUMMARY STATEMENT

Captain LEBACK. Thank you, Mr. Chairman and members of the committee. It is a pleasure to be here this morning to discuss the Maritime Administration's fiscal year 1992 budget request. I have with me on my right my Associate Administrator for Administration, Mr. Earnest Hawkins. The importance of maintaining the Ready Reserve Force and an adequate supply of well-trained personnel has been dramatically emphasized by the Operations Desert Shield and Desert Storm. At the request of the Navy, the Maritime Administration began activating RRF ships on August 10, 1990, and by the end of January 1991, the RRF ships engaged in the operation to the Middle East had carried approximately 2 million metric tons of cargo, which is approximately 29 percent of the total sealift carried to date.

The activation of each RRF ship in Desert Shield required approximately 1,000 man days of work. Based on this, we have provided for the shipyards and the ship repair base, which is sorely needed, approximately 70,000 man days of work in 7 months to bring these ships out of layup. It has also required over 2,300 mariners to man these vessels. Prior to Operation Desert Shield, there were only an average of 4 activations per year that had been undertaken during the 14-year life of the RRF program which equates to somewhere in the neighborhood of 50 activations. Also, a great number of those activations were repeats because of special use of the vessels, thereby leaving us problems of having the "Ready" in the Ready Reserve Force.

In addition to the 74 ships that are out there, we have undertaken on our own an additional seven test activations of the remaining RRF ships to improve the readiness of the fleet as we go on.

In lessons learned to date from Operation Desert Shield, the underlying or primary lesson learned, is the need for sealift. Following that, I believe, there were three additional main lessons learned. In order to ensure that that fleet is ready as required by the Department of Defense and in the best interest of the country and its political aspects and projections throughout the world, if we are going to have a Ready Reserve Force, we must have the ships adequately maintained and put the word "Ready" back into Ready Reserve Force. We found that we were not able to meet the deadlines as required, mainly because of the lack of prior year funding and the reduction of the maintenance.

The second important item was the lack of seafarers to man the force. There is no question the papers have mentioned use of retired seamen with ages above 70. In fact, we have one FFS running with an 82-year-old second officer on it. We have another one running with a——

Senator HOLLINGS. Is that fellow named Thurmond? [Laughter.]

Captain LEBACK. No; I don't believe so. But in order to do the initial manning, we had to reach down very deeply into the retired list and to wherever we could find people. Crews were found with the cooperation of the labor unions, the ship managers, and the general agents and, of course, MarAd itself.

It is a problem to provide adequate seamen in an emergency. We have had this fleet for 14 years, and this is the first time that we have had to activate it, and it required well in excess of 2,300 men. We had to go through every place that we could to find and bring these people back into service.

There were a number of seamen, particularly in the officer category, that were ashore. They had been sailing for 5 to 10 years, and then came ashore into the industry itself, either in the management of the industry or in the infrastructure but they maintain active Coast Guard licenses as merchant marine officers. These people were more than willing to man the vessels. However, if they left their jobs, under the current law, since there is no provision for reemployment rights, they would have had to give up their positions ashore and start all over again when Desert Storm is over. Had we had the ability to bring these people in under a reemployment rights provision, it would have eased the problem of manning these ships.

The third lesson was the lesson of the shipyards and the ship repair base. It was very evident that having the shipyard and ship repair base declining over the last decade that had we activated all 96 ships on day one, we would have been sorely tested to get them out of the shipyards on time. We were fortunate that this was a build-up over a period of about 6 months where we broke out the

RRF in stages. Had it been done for all 96 ships, I am very doubtful that the shipyard/ship repair base would have been able to activate the vessels in the 5-, 10-, and 20-day periods as required. That needs to be carefully analyzed at the end of Desert Storm.

Unfortunately, our active, privately owned merchant fleet has declined and is continuing to decline to the extent where now, our liner ships only carry about 19 percent of our nation's international liner trade. Ten years ago, that was 30 percent. The Departments of Defense and Transportation are very concerned about the declining sealift capability available to meet the national security requirements. There are no easy solutions to remedy this decline, but we are continuing to seek those solutions to problems that we can meet.

The MarAd's total budget request is $570,210,000. This includes $272 million for the payment of existing long-term contracts for operating differential subsidies. This is an increase of about 4 percent over last year and covers 94 vessels. The 4-percent increase primarily covers the increases in the wages that were negotiated in the 3-year contracts, as well as some funding for the last quarter, which we have carried them over into 1992.

The request includes $73 million for the agency's "Operations and training" account, and this represents approximately a 6-percent increase over 1991. This increase covers primarily unavoidable cost increases and pay raises. We have also requested $1 million for expanded research and technology as well as $1.1 million for annualization of funds transferred from the "Ship construction" account unobligated balances in 1991. The unobligated balance now in the "Ship construction" account is only $84,000.

The $225 million for the Ready Reserve Force provides for $104 million for fleet additions of seven vessels, $117 million for maintenance and operations, and $4 million for improvement of facilities such as dredging and moorings and so forth.

PREPARED STATEMENT

This concludes my statement, Mr. Chairman, and I will be pleased to answer any questions that you or the committee may have.

[The statement follows:]

STATEMENT OF CAPT. WARREN G. LEBACK

Mr. Chairman and members of the subcommittee: I am pleased to appear before you to discuss the Maritime Administration's fiscal year 1992 budget request. The Maritime Administration is responsible for the promotion of a strong U.S. merchant marine for carriage of domestic and foreign commerce and for national defense purposes. To carry out this broad responsibility we strive to assure: (1) an active fleet of privately-owned and operated commercial vessels; (2) a sufficient supply of trained and efficient personnel to man these ships; (3) a government-owned reserve fleet of cargo vessels which can be activated during national emergencies; and, (4) support to other maritime-related activities that further the national interests of the United States.

OVERVIEW

The importance of maintaining the Ready Reserve Force (RRF) and an adequate supply of well trained personnel has been dramatically emphasized by Operations Desert Shield and Desert Storm. At the request of the Secretary of the Navy, the Maritime Administration began activating RRF ships on August 10, 1990. The first

RRF ships were turned over to the Military Sealift Command (MSC) for operation just five days later. By the end of August, 27 RRF ships had been tendered to MSC. That number now exceeds 70 ships. By the end of January 1991, RRF ships had carried to the Middle East approximately two million metric tons of cargo, which is 29 percent of total sealift cargo deliveries. These ships are continuing to carry military cargo to sustain our armed forces deployed there.

Activation of each RRF ship for Desert Shield required approximately 1,000 man days of work before the ship could be tendered to the MSC. Further, over 2,300 mariners were required to crew these 70 plus ships. Prior to Operation Desert Shield, an average of only about four activations per year had been undertaken during the 14-year life of the RRF program. To date, Operations Desert Shield and Desert Storm have required over 70 activations during the past seven months to meet Department of Defense (DOD) requirements. We have undertaken an additional 7 test activations of remaining RRF ships as part of our 1991 maintenance program to improve readiness of the RRF fleet.

One year ago at this time, the RRF program was untested in actual large-scale deployment. I am pleased to report that overall, the RRF has met the challenges of Operation Desert Shield. I am very proud of our domestic shipyards, seagoing unions, and my own organization for this accomplishment.

Unfortunately, our active privately-owned merchant fleet has declined to such an extent that U.S.-flag liner ships carry only about 19.1 percent of the Nation's international liner cargo trade. Ten years ago, the liner fleet transported approximately 30 percent of our dry cargo. U.S.-flag bulk ships transport only a small fraction of this country's oil and dry bulk imports and exports. In the aggregate, the privately-owned U.S.-flag merchant fleet consists of 482 vessels. Many of these ships are rapidly reaching the end of their economic life. The Departments of Defense and Transportation are concerned about the declining sealift capability available to meet national security requirements. There are no easy solutions to remedy the progressive decline of our merchant fleet. We will continue to seek solutions to this problem within the framework of the Secretary of Transportation's National Transportation Policy and the sealift requirements studies currently underway in the Department of Defense.

The fiscal year 1992 budget will provide for payment of existing long-term contracts for operating-differential subsidies, will maintain the Agency's operations and training needs, and will provide support for the Ready Reserve Force to meet Department of Defense requirements.

REQUEST FOR APPROPRIATIONS

OPERATING-DIFFERENTIAL SUBSIDIES (ODS)

An appropriation to liquidate contract authority of $272,210,000 is requested. This will pay for an estimated subsidy program of 61 liner and 33 bulk ships, a decrease of 5 bulk ships from 1991. This program is designed to offset the higher total employment costs associated with operating U.S.-flag vessels versus lower cost foreign-flag vessels. The requested amount is an increase of $11,010,000 for 1992 funding, primarily for financing the level of unfunded contract authority projected to be carried forward from 1991.

OPERATIONS AND TRAINING (O&T)

An appropriation of $73,000,000 is requested which is an increase of $4,000,000 over the 1991 appropriation. The requested increase consists of $1,100,000 to annualize the amount transferred from Ship Construction unobligated balances in 1991, $1,900,000 for unavoidable cost increases, such as pay raises, and $1,000,000 for an expanded Research, Technology and Analysis program related to marine safety, national security and environmental programs. Some of the research funds will be used for projects related to the recently enacted Oil Pollution Act of 1990.

READY RESERVE FORCE (RRF)

An appropriation of $225,000,000 is requested for this account, which is the same amount provided in the 1991 appropriation. The level of funding requested has been developed in conjunction with the Navy and is fully supported by the Department of Defense. The President's Budget supports maintenance of the ships currently in the RRF and continued progress toward achieving the long-term DOD objective of 142 ships in 1994.

The amount requested in 1992 includes $104,000,000 for Fleet Additions, $117,000,000 for Maintenance and Operations, and $4,000,000 for Facilities. The funding for Fleet Additions will result in an increase of seven ships; two tankers, two RO/RO's, one break bulk, and one heavy lift for a total of 111 ships by the end of 1992 and one T-ACS for delivery in 1993. The Navy requirement of 142 ships composed of a specific mix of ship types in 1994 remains unchanged.

In summary, we are requesting for fiscal year 1992 an appropriation to liquidate contract authority of $272,210,000 for Operating Differential Subsidies; $73,000,000 for Operations and Training; and $225,000,000 for the Ready Reserve Force.

This concludes my prepared statement, and I will be pleased to answer any questions that you may have.

BIOGRAPHICAL SKETCH OF WARREN G. LEBACK

Captain Leback was appointed by President Bush to serve as Administrator of the Maritime Administration, United States Department of Transportation, in October 1989. In this position, he is responsible for an agency, with more than 1,000 employees, charged with developing and maintaining an American merchant marine adequate to meet the Nation's commercial and defense needs.

Captain Leback has broad experience within the maritime industries. As a World War II merchant marine veteran, Captain Leback served as a licensed deck officer and, eventually, Master of vessels operated by Grace Lines. As the General Manager of Marine Operations for Central Gulf Steamship Corporation of New Orleans, Captain Leback was responsible for vessel operations, maintenance and repairs, and vessel conversions and construction.

He has held management positions with: Central Gulf Steamship Corporation, Sea-Land Service Inc., El Paso LNG Company, and Puerto Rico Marine Management Co.

He has been responsible for the construction or conversion of 45 American-flag vessels plus 9 foreign-flag vessels. His management experience includes passenger vessels, break bulk vessels, bulkers, tankers, Roll-on/Roll-off, containerships and liquefied natural gas carriers.

Captain Leback served as the Deputy Administrator of the Maritime Administration between 1981–1985.

Captain Leback received his Bachelor of Science degree from the United States Merchant Marine Academy, Kings Point, New York, in 1944. He maintains an active U.S. Coast Guard license as "Master, Steam and Motor Vessels, Any Gross Tons, Oceans."

He is a member of the American Bureau of Shipping, the Marine Society of the City of New York, the Society of Naval Architects and Marine Engineers, the American Society of Naval Engineers, the Nautical Institute, and the National Alumni Association of the U.S. Merchant Marine Academy.

USE OF NAVY SHIPYARDS

Senator HOLLINGS. Let us go right to the shipyard and the repair facilities issue. Senator Inouye has extensive facilities at Pearl Harbor. I have an excellent shipyard at Charleston. Senator Rudman has Portsmouth. The facilities are wanting, looking for workload and have people available in each of these communities and ready to go, yet the Navy is considering significant work force cutbacks and really not asking for this maintenance work and repair work to be done.

What do you say to that? I mean, you are telling us there is trouble and the availability is there, and we have got now on the floor of the U.S. Senate two dozen jobs bills with the recession and everything, but here is Desert Storm; here is the need. These ships are coming around from Texas, coming down from Virginia.

In fact, they are just loading everything from Fort Bragg and Fort Stewart right in the Port of Charleston. In fact, all the women go through Fort Jackson, and now the callups that come through Fort Jackson. It is very interesting to see. They have all the dental work. They have got teams of dentists. They cannot send a guy out there into Desert Storm and then get a toothache. It has amazed me what they are really going through day and night around the clock. And then we have such tremendous capacity at Portsmouth and Charleston, where we could be doing this work on ships. But, we don't even provide for it. On the contrary, the Navy is planning to cut back. What is your answer to that?

Captain LEBACK. Well, on the naval facilities, we did utilize the Philadelphia Navy Yard to partially activate three vessels. Those three vessels had been outported using the Navy facilities in Philadelphia, and rather than bring them into a commercial yard, we initiated the work there. We are reviewing how well that went: what were the pitfalls, the shortcomings and so forth.

You bring up a very interesting question on that, Senator, utilizing the available naval facilities. It may very well be that we have to have a long look at it to make sure that a naval facility can do the work on a merchant ship in the short period of time required as compared to the long periods of time that the naval vessels are under overhaul.

It is a possible source, and as I say, we had three ships partially activated at the Philadelphia Navy Yard.

Senator HOLLINGS. That is because they were homeported there; is that correct?

Captain LEBACK. Yes, and we had one activation at the Mare Island Naval yard, also.

Senator HOLLINGS. Thank you. I want to yield to my colleagues. It is good to get them here on a Friday.

READY RESERVE FORCE ACTIVATIONS

Captain Leback my records show that the United States chartered 220 commercial, mainly foreign, vessels for Operation Desert Storm.

Captain LEBACK. Right.

Senator HOLLINGS. And yet you have got 25 Ready Reserve Fleet ships that were not activated. What is the explanation for that?

Captain LEBACK. As of now we have activated 74. We have another eight in the pipeline. The balance that is left in the Ready Reserve Force are two troop ships which are actually training vessels for the State of Massachusetts and the State of New York, five small coastal tankers which are not required for the petroleum sealift at this point, four breakbulks and three crane ships.

The chartering of the vessels from the foreign flags, yes, there have been a number of them. Two hundred and eleven ships were not chartered at the same time. There have been 211 ships chartered, in total, but the average on charter at any given time has been a little over 100. Now, they have been on trip charters, voyage charters or short 2- to 3-month charters.

The greater part of those vessels were used to bring the cargos and the military prepositioned equipment out of north Europe and Italy.

We also must not forget that this has been a global effort as far as Desert Storm is concerned. I did a rough analysis of what was on charter at the end of January. I think the Military Sealift Command had chartered 105 foreign flag vessels representing 23 countries. We certainly went after those flags as a coalition approach. Within the 105 that were chartered on January 31, there were a number from the NATO countries. There were also a number of United States effective control ships, those ships that are owned by Americans under a foreign flag.

But again, in looking at Operation Desert Storm, it is a coalition attempt or effort against Iraq, and, therefore, we use foreign flag vessels. I will not deny or argue on the point that had it been a go-it-alone situation, without the coalition, we would not have been able to do what we have done in the first 7 months. We would have been sorely pressed, as I said in the opening statement, for sealift capability.

NATIONAL DEFENSE RESERVE FLEET ACTIVATIONS

Senator HOLLINGS. What about the National Defense Reserve Fleet? The Navy did not activate any of it. So why have it?

Captain LEBACK. Well, the national defense fleet is composed of approximately 118 retention ships exclusive of the RRF, of which 71 are *Victories*. Those *Victories* were built in World War II. They were used extensively in the Korean War and the Vietnam war. However, to activate those it would have required 30 to 120 days per ship because they are in deep layup. They have not been activated since the Vietnam war in the early seventies. They would have had to have been activated had we had to go it alone, and therein lies what I have said earlier. We would have been in deep trouble; it would have taken us longer to do it.

READY RESERVE FORCE MAINTENANCE FUNDING

Senator HOLLINGS. And the maintenance just wasn't good. I will never forget back last fall, we had a big exercise up in New York and were talking to some of the captains. Those who are really in the know, and there were four vessels that broke down one way or the other in the middle of the Atlantic, and they were limping into Spain at one time, they thought we were invading Spain instead of Saudi Arabia, with all the vessels coming in there.

And you level funded them with all of these needs. They have not given you any more money.

Captain LEBACK. We have $225 million, which is the same as what we had in 1991, right?

Mr. HAWKINS. Yes.

Senator HOLLINGS. Heavens knows, from your testimony, that is inadequate. Excuse me. Let me yield to my ranking member here.

Senator RUDMAN. Go ahead, Senator.

Senator HOLLINGS. He was here before all of us.

Senator INOUYE. This is not very important.

READY RESERVE FORCE OUTPORTING

Senator RUDMAN. I do not have a lot of questions. I do not really have a lot. You asked the second question I would have asked about why you did not use more of our own Reserve fleet, but I think I have the Administrator's answer. I was curious on that fleet. On the Ready Reserve Force vessels, you do a lot of outporting for very valid reasons. I notice you outport ships in Yokohama, but you do not outport any ships in Charleston or Portsmouth. Why do you outport in Yokohama and not in Charleston?

Captain LEBACK. Aren't there two there, Captain?

Mr. DELPERCIO. Two small tankers in Yokohama.

Captain LEBACK. They were turned over to us in Yokohama by the Military Sealift Command. They had been serving the Philippines, Okinawa, and Japan area. They are two small coastal tankers, a couple thousand net deadweight tons each, and we just left them there.

Senator RUDMAN. Was that your intention, to leave them there because of probable use in the Far East?

Captain LEBACK. Well, yes, until the Department of Defense tells us to do otherwise. As far as outporting, we are looking at outporting of additional vessels over and above what we had outported prior to Desert Shield.

Senator RUDMAN. I was looking at your outporting, and you have got them sort of spread around in San Francisco; Richmond, California; another one in California; three more in California; on the east coast you have got New Orleans and Jacksonville; Mobile on the gulf; Norfolk; Portland, Maine; Baltimore; Buzzards Bay; Providence; and Maryland. You have got them spread around quite a bit. You seem to have quite a concentration on the James River; at Philadelphia; and at Beaumont, TX.

Captain LEBACK. The James River, Beaumont, and Suisun Bay in California are the primary Reserve fleet sites.

Senator RUDMAN. And the outporting of the other places is where you leave them?

Captain LEBACK. Right.

Senator RUDMAN. Do you intend to spread some more of those around the country?

Captain LEBACK. We are intending to review that with DOD, yes.

U.S. MERCHANT MARINE ACADEMY FUNDING INCREASES

Senator RUDMAN. I am wondering, just a quick question on your request on support for Kings Point. You have asked for about a $1.2 million increase over 1991 funding. It is intended to recover inflation; is that correct? Is that out of mandatory costs?

Captain LEBACK. Right.

Senator RUDMAN. That basically is to cover that?

Captain LEBACK. Yes; actually, for that, there is in our "Operation and training" account, we are recovering $1.4 million in pay raises. That is for the entire agency, including Kings Point. Then we also have come up this year on geographic pay adjustments, that is $550,000 and then we have the increased cost of payments to the employees' compensation fund. The balance of it is in services.

We have, in the budget, and it was started in 1991, increased moneys for improvement of facilities and equipment at Kings Point.

Senator RUDMAN. Essentially, that is what you have done, is you have covered what would be normal growth in costs, pay, inflation, and services.

Captain LEBACK. Right.

STATE MARINE SCHOOL FUNDING

Senator RUDMAN. I understand that and agree with it. I question, though, why support for the State maritime academies in Maine, New York, Michigan, Texas, and California has remained constant at $8.9 million. They face the same inflationary pressures, and we ought to try to keep the ratios of support the same. Why not find a way to increase our support for them so that they do not have to absorb more of that themselves with the States having enormous problems of their own?

Captain LEBACK. With the State academies, we have three areas of support. We provide the training vessels. Last year, we took delivery of a 1965 freighter rebuilt into a training ship for the State of New York. We expended about $22 million.

Senator RUDMAN. What was the name of that ship?

Captain LEBACK. The *Empire State VI*. We provided Massachusetts with a new ship or a replacement ship 7 years ago. We do provide, at no cost, the training ships, and then we provide for the maintenance and repair on them. That approximates about $6.7 million a year. And then we provide the student incentive payments for those students enrolling in the Naval Reserve, and that payment is——

Senator RUDMAN. Close to $3 million, is not it?

Captain LEBACK. It is $1.4 million. That equates to $1,200 a year per student enrolled in the program. That hasn't been changed over a number of years. We need to look at that as part of looking into a merchant marine reserve program to alleviate the problem that I had discussed in the opening statement of the lack of people.

We do not provide direct support for the faculties, for the physical plant or equipment within the buildings and so forth at the State schools.

Senator RUDMAN. I understand about the vessels, because this committee has, in fact, worked with you to make sure that we were able to do that in certain instances. It just seems to me that other than the vessels, the other support payments that you make and describe, we ought to try to at least not have a regression of our support, thus doing some burden sharing, if you will, with State governments which, in many cases, have enormous problems of their own.

We do not have an academy in my State, but I am familiar with the ones in Maine and Massachusetts and, obviously, New York, Michigan, Texas, and California all have those same problems. We probably, in these fiscal times, cannot do more than we are doing, but we ought to try to at least keep pace with what we were doing, so even though we are giving them the vessels, we do not start to have essentially a regression of the amount of funding which gives them a choice of either reducing their services, which you do not want and we do not want in terms of what we are trying to do with our merchant marine, and second, to make sure we attract the right people and have the incentive payments.

That is just something that we might talk about as we work through this bill to see if we can find out what that $8.9 million of fiscal 1991 converts to in terms of 1992. Maybe it is $9.3 million or $9.4 million; maybe it is not very much, but I think there is a principle involved of keeping our commitment to these maritime academies. That is my point.

Captain LEBACK. Thank you.

Senator HOLLINGS. Senator Inouye?

READY RESERVE FORCE FUNDING

Senator INOUYE. Thank you, Mr. Chairman.

As a matter of information, the ships under the RRF were requested by DOD because of Desert Storm. Who decides upon the level of funding, DOD, OMB, or MarAd?

Captain LEBACK. On the purchase of the vessels, that is joint between DOD and MarAd or the Navy as to what is to be purchased in order to get to the 142 vessels by 1994.

The maintenance and repair we, MarAd, since we are charged with the maintenance and the repair of the fleet, that is done by MarAd staff. It is put together in the budget.

Senator HOLLINGS. Excuse me. If you do not mind yielding, that is exactly the point that is most important to the committee. The request for sealift is under the 050 national defense budget function, the way we have to play the budget game, with Defense, which is Senator Inouye's. He chairs that Defense Appropriations Subcommittee. Who determines how much goes under 050 for MarAd: MarAd or the Defense Department? Does OMB make the decision for MarAd and the Department of Defense?

Captain LEBACK. No; MarAd and the Department of Defense reach an agreement on the budget submission of the moneys required for the Ready Reserve Fleet. It is part of the 050 account.

Senator HOLLINGS. Then it is really sent forward by the Department of Defense.

Captain LEBACK. No; it is sent forward under our budget.

Senator HOLLINGS. Sent forward under your budget?

Captain LEBACK. Right.

Senator HOLLINGS. Then OMB, if there is going to be any cut, they can cut it back or whatever.

Captain LEBACK. Right. They can do that.

VESSEL FOR AMERICAN SAMOA

Senator INOUYE. I just wanted to acquaint myself with that, because I hope to touch upon this when DOD's budget is taken up.

Mr. Chairman, if I may, I wish to submit a few questions, but I would like to spend just a couple of minutes advising this committee of some of the activities of MarAd which may not be generally known.

About 25 years ago, the only ship, which was essentially a tug boat, that connected the islands of Tutuila, which is part of American Samoa, that is the main island, and Manua Islands, sank 25 years ago.

For the past 25 years, the whole generation of people in Manua have not been able to go to the main island where Pago Pago is located, the airlines at times dangerous, too expensive for the people; the economy has gone down to a shambles level because you cannot carry out produce.

Well, when MarAd was advised of this, they immediately went to work and came up with a ship which our officials had confiscated as part of the war on drugs, and with the request of $750,000 which they have spent, I think about $450,000, they were able to refurbish this, and in a few days, it is going to be going to Samoa and for the first time, children from Manua will able to see the big island of Tutuila, and Pago Pago.

They are going to have a national celebration on that day, on which they will deify Captain Leback. [Laughter.]

I wanted to say, on behalf of the people of Samoa, thank you, Captain Leback and the MarAd people for setting aside the big work and thinking about the little people in Samoa. You have done something terrific for them. I thank you very much.

Captain LEBACK. Thank you very much.

Senator HOLLINGS. Thank you, yes, sir.

Captain LEBACK. Thank you very much for your kind compliments, Senator. It was certainly a privilege to do this. That vessel is on its way and should arrive in Samoa, I believe, the latter part of April under the transport or arrangement of the Navy. Then, of course, the Coast Guard will train the Samoans to operate her.

I cannot take all of the credit for it. It has been the Navy, Coast Guard, and MarAd.

Senator HOLLINGS. And then you have to commend Senator Inouye. He is too modest. He had to fight the Department of Transportation, MarAd and over on the House side, our distinguished colleague, Mr. Jones. I congratulate you, Senator.

Captain LEBACK. We work very close with Senator Inouye.

Senator RUDMAN. What is the name of that ship?

Senator INOUYE. *Manua-Tutuila II.*

Senator RUDMAN. I was thinking we ought to rename it.

Senator INOUYE. Mr. Chairman, if you see me absent in the last week of April, you will see me in Samoa.

READY RESERVE FORCE RESOURCE REQUIREMENTS

Senator HOLLINGS. Did I ask you how much you requested from the administration for MarAd's 050 budget while Senator Inouye was asking questions? In other words, for the RRF, Ready Reserve Fleet, the request by MarAd of Defense——

Captain LEBACK. I believe it was close to $298 million.

Senator HOLLINGS. And it gave you how much?

Captain LEBACK. $225 million.

Senator HOLLINGS. $225 million. We have been through this. They are talking about getting rid of old timers here, but it is the same act, same scene we tried with General Cassidy. Now we have Admiral Diamond. It is always: I cry on your shoulder, you cry on mine. We have to do something about sealift, but nothing happens.

What is your plan to correct what you have just outlined in your testimony by way of maintenance, by way of personnel, and by way of ship repair and shipyards? If you were king for a day, what can we do? Let us get something going, some silver lining out of this Operation Desert Storm. We have got an awareness now, their sensitivity. We have got their attention; we ought to do something.

Captain LEBACK. On the maintenance, I believe we should look on a long term, at least a 5-year maintenance program that can be funded so that MarAd has the ability to lay out in a progressive way the maintenance of a fleet.

Senator HOLLINGS. Can you submit that to us?

Captain LEBACK. I would be more than happy. We can.

Senator HOLLINGS. And either we can get it or Chairman Inouye can get it.

Captain LEBACK. This would permit us to activate the vessels periodically, both on a dock trial on an annual basis and a sea trial every other year and then be able to correct any deficiencies that we would find due to the aging of the vessels.

Senator HOLLINGS. They wouldn't be breaking down going into Spain and all.

Captain LEBACK. Right. Now, on the question of personnel, we have a committee looking at establishing a Merchant Marine Reserve which would be dedicated to manning of the RRF and supplementary manning of the active fleet.

Senator HOLLINGS. All under 70 years of age? [Laughter.]

Captain LEBACK. I would say the committee is composed of retired flag officers and the only active ones are the captains that I am using out of the merchant marine USMMR classification.

But we do need to take a look seriously at providing a method in which we can utilize those merchant marine personnel that have been on active service at sea and then have come ashore but still would like to be available in a reserve unit to man the ships in time of need.

Coupled with that, I think we need to look at what we do in the State schools and the Federal academy to make sure their graduates remain in a Reserve program for at least 8 to 10 years after graduation. Part of that may be to look at how do we fund it and how do we provide for assistance within the State schools themselves?

But as I said at the opening statement, personnel is critical, and we have to do something with it, and we are addressing it at this moment. We did complete a mandatory study on the manning of the merchant marine. That is being distributed shortly, and it supports what we have already started to do.

The shipyards, we will be doing several things in the short term. I intend, when we stand down from Desert Storm and start to deactivate the vessels, to do it in a progressive manner. This will provide continuity of work over a period of time to the shipyards and spread it out so we can at least look at maybe 1 year of maximum of work in the shipyards to deactivate, rather than deactivate the same way we activated.

Senator HOLLINGS. Can you submit that to the committee and the amount of money necessary to do it?

Captain LEBACK. Right. We can do that.

[The information follows:]

READY RESERVE FORCE SHIP MAINTENANCE

While a full assessment of the activation and operation of a large portion of the RRF for Operation Desert Shield/Storm is yet to be completed, several maintenance and readiness initiatives are currently under consideration.

Continue work to develop better procedures for laying up RRF ships. Many of the equipment failures experienced during Desert Shield activations are attributable to inadequate lay-up procedures and techniques as well as years of inactivity. We are in the process of developing improved, standardized, lay-up specifications for critical systems and components particularly those that were common sources of problems during activations.

There must he a coherent, systematic, long term, at least five-year, maintenance program that is fully funded at the base level so that MARAD has the ability to maintain the force in a progressive way. Key elements of an effective long range maintenance program include the following:

—Increasing the outporting program by berthing all 5 day readiness ships in close proximity to activation facilities and/or their likely load out ports.

—Placing especially high priority ships, e.g., Ro/Ro's and heavy lift vessels, in a reduced operating status (ROS) with small crews aboard and schedule an annual sea-trial. This is similar to the maintenance scheme employed by MSC for the fast sealift ships (SL–7's), but would probably not require as many retained crew.

—Sea-trialing non-ROS ships in the fleet every other year. Such an expansion of the test activation program coupled with placing high priority vessels in ROS and more frequent docktrials of other vessels will virtually assure that in the future no RRF ship is left entirely "cold" for more than 2 years.

These measures, if fully pursued, will significantly increase RRF ship readiness. However, they will result in increased costs and funding trade-offs will have to be evaluated.

MANNING OF READY RESERVE FORCE SHIPS

The American merchant fleet is providing fewer and fewer jobs for American seamen as the number of ships in the U.S.-flag fleet continues to decline and crew sizes grow smaller. A long run decline in active seafarers has been experienced as the labor market reacts to decreasing job opportunities.

When faced with large unexpected spikes in demand for people like Desert Shield/Storm, the personnel system is severely taxed. While all RRF (and other sealift) ships were fully crewed for Desert Shield/Storm, there is concern about the problems that were encountered. MARAD has recently received a contract study report, prepared by Presearch, Inc. which offers a number of ideas, and MARAD will be assessing their proposals.

In addition, MARAD is looking at various ideas concerning a possible civilian merchant marine personnel reserve system (USMS). Key elements of such a reserve system are:

—The USMS would be sized to the RRF, both in numbers of people and the necessary skill mix. Its members would be called into action only when the maritime labor market was unable to respond adequately to an emergency.

—The principal source of members would be maritime school graduates and recruitment from experienced personnel who have retired from seagoing jobs, as well as persons actively sailing in the commercial merchant fleet.

—The essential obligation of active members would be their commitment to serve aboard RRF and other civilian manned sealift vessels in time of war, national emergency or whenever such vessels are activated and operated in a crisis.

MARAD is also concerned about the absence of so-called "reemployment" rights for civilian mariners. Military reservists recalled to active duty enjoy job protection by statue. Merchant seamen are civilians in all regards, and as such they do not enjoy the job protections afforded military reservists (38 U.S.C. 2021 et seq.) who are recalled to active duty. In crewing our RRF ships, the existence of reemployment rights would have opened up potentially large numbers of available seafarers to us. Work in the merchant marine is very demanding physically, and many mariners leave seagoing jobs at a relatively young age to seek work ashore. MARAD could not tap that source, however, since these individuals would have had to resign their full time job in order to take temporary work in the RRF. Reemployment rights for merchant mariners would be very helpful now and in the future, and would have no impact on the budget whatsoever. MARAD is working within the Administration to address this matter expeditiously.

SHIP REPAIR AND SHIPYARDS

The availability of shipyards and activation personnel for Desert Shield/Storm was adequate. Shipyards gave MARAD priority over other work when required to meet activation time frames. No defense priority waivers for shipyard labor or facilities were required to meet this large scale operation. However, had all 96 RRF vessels been activated simultaneously the shipyard and ship repair base would have been inadequate to meet the demand. The activation of a major portion of the RRF is a labor intensive effort involving numerous shipyards and industrial facilities along the U.S. coasts. It is estimated that between 800–1,200 work days, exclusive of unforeseen major repair requirements, were expended to get a vessel ready for full sea trials.

Lay-up of RRF ships activated for Desert Shield/Storm will take place over a longer period than when activated. Lay-ups will be on a straight time basis as opposed to the highly accelerated basis that is required for activation. Further, many of the ships that were activated will require drydocking and we envision that the lay-up process will last for many months due to the limited number of drydocks available in this country.

We will also continue work to develop better procedures for laying up RRF ships. Many of the equipment failures experienced during Desert Shield activations are attributable to lay-up procedures and techniques as well as years of inactivity. We are in the process of developing improved, standardized, lay-up specifications for critical systems and components particularly those what were common sources of problems during activations.

Finally a number of high priority RRF ships, in particular Ro/Ro's and heavy lift ships, will have small retention crews aboard during lay-up. This will reduce the demands on the lay-up contractors since a number of the systems will remain active and these crews will perform some of the more routine maintenance actions that otherwise would fall to the lay-up contractor.

Senator INOUYE. Mr. Chairman, may I request that this information be copied to the Defense Subcommittee, also?

Senator HOLLINGS. Yes, please. Give that to Chairman Inouye, who heads the Defense Subcommittee, because that is really the way to work it. We might have to do like Chairman Murtha on the House side. He has got an intelligence drug unit under Defense. We might be able to get some MarAd under Defense, too.

Senator RUDMAN. In fact, we may end up with only one subcommittee in the entire Appropriations Committee.

Senator INOUYE. Which one?

Captain LEBACK. We will do that in the program from the lessons learned to do something over time.

Senator HOLLINGS. Did the Senator have a comment?

Senator INOUYE. No.

Senator HOLLINGS. I apologize. Senator Kasten?

READY RESERVE FORCE SHIP ACTIVATIONS

Senator KASTEN. Mr. Chairman, I just want to take a moment. All of us are interested in the same series of questions, I think, here with regard to the Ready Reserve Force and the Ready Defense Reserve Fleet, and I think they have been covered here. But now that we have had Operation Desert Storm, I think more of us are learning more about that, and I think it is good that we do.

It is my understanding that you have ships designated for activation within 5 to 15 days of notification by the Department of Defense. That is one group, and then there is another group of ships which are designated for notification over a longer period of time. Specifically, what is a longer period of time?

Captain LEBACK. Well, there are three categories of RRF ships: Five days for the ones that are primarily to take up the initial high priority requirements. These, in the fleet, would be the RO/RO's; the roll on/roll offs, the barge carriers, the auxiliary crane ships for discharging and handling containers; and then there are 10-day ships.

Senator KASTEN. You have 5-day ships, 10-day ships.

Captain LEBACK. And 20-day ships.

Senator KASTEN. Twenty-day ships?

Captain LEBACK. Within the Ready Reserve Force, yes.

Senator KASTEN. What percentage of the 5-day, 10-day and 20-day ships are now being used? Have we activated all the fives?

Captain LEBACK. We have activated all the fives.

Senator KASTEN. All the fives.

Captain LEBACK. All the tens.

Senator KASTEN. All the tens.

Captain LEBACK. And almost all of the twenties, right?

Mr. DELPERCIO. We have activated all but 22 ships, and there is a small mix of tens and fives left.

Senator KASTEN. Of the 20-day ships that you tried to activate, how many of them did you activate in 20 days?

Were you able to do it?

Mr. DELPERCIO. Only one was and it was a special case.

Captain LEBACK. The 20-day ships were not the problem, Senator. It was the 5-day ships and the 10-day ships.

Senator KASTEN. They became 20-day ships, or they became 2- or 3-month ships?

Captain LEBACK. No; there were several of them that were under long-term repair and modifications when the activation came. The military realized this. Even though they were 5-day ships, we had several of them under long-term repairs. The 5-day ships and the 10-day ships for the greater part did not make it.

Senator KASTEN. The reason that they did not make it had to do with the fact that they weren't funding the maintenance and the renovation quickly enough or because you all weren't managing well enough? Obviously, you had not done this for a long time, and to do it at all would be tough.

Captain LEBACK. To get back, our maintenance and repair funds have been cut over the years. They have gone up and down like a yo-yo, so that contributed to the major part of the problem. A great amount of maintenance was deferred because we did not have the money.

Then the second part, which also contributed to it, was that the ships were located at or near the three Reserve fleet sites.

So you had to move them from, for example, Beaumont or Mobile to Tampa, FL, or to New Orleans within the 5-day period. That would take from 24 hours to 36 hours out of the 120 hours that you had to activate them.

So we are looking at that to make it more realistic. We had the same problem on the west coast, where the greater part of them were in the Suisan Bay area, and they had to be towed to other ports.

We had less problems on the east coast. We had a greater number outported, and then we were sitting with the James River fleet that has Baltimore, Norfolk, Newport News and those areas with adequate or greater shipyard facilities and so forth.

Then, of course, at the end of all of this, you had that 1-day sea trial to make sure that the ships operated before you turned them over. So when you couple the requirement of towing them from a location to a repair area and the one day——

Senator KASTEN. The sea trial wasn't necessarily at the trial area.

Captain LEBACK. No; it was afterward, to make sure they operated. So the requirement will work if it is properly allocated. When I say allocated, I mean put them in the repair areas of those you want on 5 days and then do a program of maintenance and testing over time.

Ships are going to be aging. The average age right now of the Ready Reserve Force is 26 years. We will put the ships back in layup, and activation may not happen again for another 5 to 10 years. So you have to take care of them.

Senator KASTEN. Mr. Chairman, thank you. I think all of us are interested in trying to work this problem out.

Captain LEBACK. Thank you.

RENEWED EMPHASIS ON SEALIFT

Senator KASTEN. It clearly is a problem that more people in Congress are aware of now than we were 1 year ago, and probably, the same is true for the public, as well.

Captain LEBACK. Right.

Senator KASTEN. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

What happens, Captain, is that you have got an increased responsibility now, and if we had the cessation of the war in the gulf in the next 10 minutes, obviously, our Navy and our Air Force would have to stay on station for quite some time; perhaps a complement of ground troops to be replaced and, I take it, by others, and you are going to need far more sealift.

We have been looking forward, not at a stepping down but a stepping up of the need of our merchant marine fleet. So let us submit those plans, because this is going to be ongoing this year, and there is no use to play with it. I know one thing: We have got that 050 Desert Storm budget off budget, and I do not like that, but that is the way the game is going to be played. I want to be playing it up to the hilt for our merchant fleet.

I mean, they are way down, and now is the time to start building them, and the need is there all the way around. Let us put it all together, and the money is there. I know budget points and everything of that kind. So let us move. We always study. I mean, egad, we do not need any more studies.

Senator INOUYE. Mr. Chairman, if you will yield at this point?

Senator HOLLINGS. Yes.

Senator INOUYE. I think we should underscore your words, "Now is the time."

Senator HOLLINGS. I appreciate that. Yes, sir?

Captain LEBACK. May I make a statement?

Senator HOLLINGS. Sure.

Captain LEBACK. In fairness to the Department of the Navy, and particularly MSC and the 050 account, we have had excellent cooperation and support in 1991 for the maintenance and repair requirements. We expect to have the same cooperation and prompt funding in 1992. It is working well even though it is out of the 050 account.

More importantly, on the operation of the RRF, as we request funds to reimburse the ship managers for the operating of the vessels, the Department of the Navy has been very prompt, very cooperative in seeing that the civilian side of it is being paid promptly and reimbursed promptly.

Senator HOLLINGS. Our problem is you have got to get a war to get that kind of attention from them and from us.

Captain LEBACK. That is right.

Senator HOLLINGS. All the way on the Hill. Let us start moving on them.

Captain LEBACK. I just want to make sure the Senator understood——

Senator HOLLINGS. I understood.

Captain LEBACK [continuing]. That the cooperation exists.

Senator HOLLINGS. We talked to the Navy, and Senator Inouye brought this up several times. We want to thank you, Captain, and Mr. Hawkins, for your assistance.

Senator RUDMAN. I have got a question.

Senator HOLLINGS. Yes?

MARITIME ADMINISTRATOR'S QUALIFICATIONS

Senator RUDMAN. I was looking at your background here, and I was going to say that it is really a pleasure to have someone head an agency that has your background.

Senator HOLLINGS. And knows it.

Senator RUDMAN. I was looking at your résumé. I see that you still maintain a license as a master of steam and motor vessels, any ocean, any tonnage.

Captain LEBACK. I have a twin brother that also has that.

Senator HOLLINGS. They like to get out of the house. [Laughter.]

Senator RUDMAN. Maybe he will send him here next year. [Laughter.]

I just want to say that obviously, I just got to look at your testimony. I am sorry I was late, and it is obvious that we have someone in charge that, I mean, I won't say it is unusual in Government, but—[laughter]—it is nice to have someone that has that kind of background. Thank you, again.

Captain LEBACK. Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We will submit further questions. That goes to particular plans now on maintenance, shipyards, and personnel, all three. We thank the Captain and Mr. Hawkins.

Senator RUDMAN. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

OPERATION DESERT STORM

QUESTION: Since last August, 71 of the 96 Ready Reserve Force (RRF) ships were activated for Operation DESERT STORM. This represents the first time that the RRF has been activated since its creation in 1976. There were reports that several of these ships were not ready when activated.

1. How prepared were these RRF ships? How many days did it take to prepare the average RRF ship for duty? How far behind the schedule was this on average?

2. Why has the Department of Defense chosen to charter 220 commercial -- mainly foreign -- vessels when it still has not activated 25 MARAD RRF ships?

3. What lessons has DESERT STORM taught regarding manning of RRF vessels? What lessons have your learned regarding operation and maintenance -- should maintenance be increasing? If so, why does the FY 1992 budget request a significant reduction in RRF maintenance?

ANSWER: 1. While the Ready Reserve Force (RRF) ships were not as ready as we would have liked, the Commander, U.S. Transportation Command has stated that even accounting for breakout delays, the RRF has maintained an 81% overall reliability rate while delivering 29% of all dry cargo sealifted to the Gulf region. This is proof that the RRF concept is sound.

Ready Reserve Force (RRF) ships are assigned a readiness status of either 5, 10, or 20 days by the Navy. Over the past 5 years when 31 ships were added to the fleet the number of 5 day readiness assignments increased from 27 to 65. Activating a ship within 5 days is a very challenging task as these ships are totally "cold" with no shipboard systems in operation nor crew aboard. Also, within the 5 day period, a 24 hour sea-trial is to be conducted prior to tendering the ship to the Military Sealift Command (MSC).

The only way accurately to assess the readiness of the RRF ships is to periodically break them out and activate them. MARAD and the Navy have sought for years to establish an RRF test activation program for the purpose of testing the ships, activation facilities, and procedures. Unfortunately, because of funding limitations the only RRF ships activated in recent years were those taking part in DOD exercises. As a result many of the ships used in DESERT SHIELD/STORM had not been activated since entering the force -- some as long as 13 years.

Average activation times are shown in the following table for the 74 ships tendered to MSC for DESERT SHIELD as of March 8, 1991:

# Ships	Assigned Readiness (Days	Average Activation (Days)	Average Delay (Days)
43	5	12.2	7.2
13	10	22.4	12.4
15	a/	a/	a/
3	b/	b/	b/

Note: a/ Fifteen ships had been reported to Navy as not available at the time they were initially required for activation. All were subsequently activated.

b/ Three ships were in a reserve operating status (ROS) at the time there were ordered activated.

The appropriation of the full FY 1991 RRF request has enabled MARAD to initiate the RRF test activation program. Consideration is being given to significantly expanding the activation/sea-trial program in future years so that ships are fully activated on an every other year basis.

2. The RRF provides a surge sealift capability to provide shipping that is not otherwise available for contingency or general war scenarios. In general, DoD activated those RRF ships/ship types for which it had a requirement for the duration of DESERT SHIELD/STORM. For example, DoD activated all Ro-Ro's (17), heavy lift ships (7), and the one OPDS ship (1); five out of the eight crane ships (T-ACS) (5); 39 of 51 breakbulk ships (39); and five out of 10 tankers (5). DoD then had to charter additional Ro-Ro's and heavylift from what ever source they could get them as there was a heavy demand for these ships and there were no more available in the RRF. In addition, DoD chartered additional ships usually on a one or two voyage basis to fill out the remaining ad hoc sealift requirements.

3. The major lessons learned to date from DESERT SHIELD/STORM are as follows:

There must be adequate logistic seapower available on a timely basis to make a major deployment of troops and to continue to support it.

Funding for maintenance and repair and test activations of RRF vessels in prior years has been inadequate.

While a full assessment is yet to be completed, there are some tentative conclusions on the RRF program:

a. There should be increased emphasis on test activations. Such a program would better identify maintenance and equipment needs for ships which have long been out of operation. RRF vessels should be activated and sea-trialed every other year and dock-trialed in alternate years.

b. Placing small retention crews on board high priority RRF ships. This type of program was being initiated just prior to DESERT STORM and may have to be expanded in order to improve vessel readiness posture, in particular with those ships in RRF-5 status.

c. Continued high priority for additional roll-on, roll-off vessels in consonance with DoD priorities.

d. Continue work to develop better procedures for laying up RRF ships. Many of the equipment failures experienced during DESERT SHIELD activations are attributable to lay-up procedures and techniques as well as years of inactivity.

The availability of shipyards and activation personnel was adequate. The activation of a major portion of the RRF is a labor intensive effort involving numerous shipyards and industrial facilities along the U.S. coasts. It is estimated that between 800-1200 work days, exclusive of unforeseen major repair requirements, were expended to get a vessel ready for full sea trials. No defense priority waivers for shipyard labor or facilities were required to meet this large scale operation. Had all 96 RRF vessels been activated simultaneously the shipyard and ship repair base would have been inadequate to meet the demand.

The basic manner in which ships were manned (i.e., relying on the Ship Managers and their contracted unions) is appropriate and efficient, provided trained mariners are available in sufficient quantities to absorb the rapid tempo of demand for people.

All RRF ships have been crewed, and replacements have been available. However, the labor unions, our chief source of personnel, were severely pressed to do the job. In some cases, activations were delayed because key crew members were slow to arrive at the ships. The unions were responsive, and their staff worked extremely hard to respond to these extraordinary demands. However, their ability to respond was constrained by their memberships and the overall availability of personnel. We expect that problem to worsen in the short run. Had we been required to activate the entire RRF simultaneously there would have been serious crew shortages and manning delays.

One key structural problem is the matter of so-called "re-employment rights." Merchant seamen are civilians in all regards, and as such they do not enjoy the job protections afforded military reservists (Chapter 43 of Title 38 USC) who are recalled to active duty. In crewing our RRF ships, the existence of reemployment rights would have opened-up potentially large numbers of available seafarers to us. Work in the merchant marine is very demanding physically, and many mariners leave seagoing jobs at a relatively young age to seek work ashore. We could not tap that source, however, since these individuals would have placed their full time job in jeopardy in order to take temporary work in the RRF.

NATIONAL DEFENSE RESERVE FLEET

QUESTION: In addition to the RRF, MARAD maintains 116 older ships in the National Defense Reserve Fleet (NDRF). These ships are in various states of readiness -- some are quite old and I believe that some members of Congress have proposed scrapping these vessels.

1. Operation DESERT STORM represented the most severe tasking of America's sealift and airlift in many years. However, the Navy did not request the activation of any NDRF ships, and has not requested the activation of all RRF ships. Since these ships were not called up for DESERT STORM, isn't it safe to assume that they are a mobilization asset that will never be used?

2. How many NDRF ships could viably be brought up to RRF status? What would the cost be per ship?

3. Why doesn't MARAD use the $49.4 million appropriated for acquisitions in FY 1991 to upgrade viable NDRF ships? Wouldn't we get more ships for the money

ANSWER: 1. The NDRF/RRF provides a surge sealift capability and sustainment shipping capability that is not otherwise available for contingency or general war scenarios.

DESERT SHIELD/STORM, as large as it was, was still far short of a general war scenario and had several significant and unique advantages. This operation had the advantages of deploying into some of the most modern and capable seaports in the world; the host nation support provided by Saudi Arabia has been extremely generous particularly in food, water and petroleum products; the lines of communication have been unchallenged by enemy action; and the U.S. has had worldwide support in our efforts. It would have been a completely different scenario if the U.S. would have had to fight its way onto the Arabian peninsula.

DESERT SHIELD/STORM once again reaffirmed that major projections of military forces cannot be supported without adequate logistic sealift. Over 70% of the RRF was activated for DESERT SHIELD/STORM when the U.S. had the ability to charter foreign flag ships and did not face shipping losses from enemy forces. This would not be the case in a go-it-alone or general war scenarios. The NDRF is the last source of logistic shipping available and would probably be required only in a general war scenario.

2. All active retention ships are assumed to be capable of being brought up to RRF status or activated. A very rough estimate of the cost per ship to upgrade/activate these ships is $3 to 10 million and would take 30 to 120 days per ship depending on the availability of shipyards to complete the work. This is in contrast to 15 to 18 months to initiate a shipbuilding program that would cost $32 to $50 million per ship for a larger breakbulk in a series building program.

3. The DoD goal of 142 ships is not simply to reach an arbitrary total number of ships but is the aggregate of a subset of specific ship types. The current 142 ship goal is composed of 59 breakbulk ships, 9 heavy lift ships, 24 Ro/Ro's, 12 craneships, 36 tankers, and 2 troopships. The DoD provides guidance as to the priority of reaching these goals within the availability of ships on the market and in the NDRF. The highest priority at the present time is for additional Ro-Ro's and heavy lift ships and there are none of these in the NDRF . Further, there is a requirement for conversion of additional specialized ships such as two additional crane ships (T-

ACS) and offshore petroleum discharge ships (OPDS) which may require hulls not currently in the NDRF.

USE OF NAVY SHIPYARDS FOR MARAD SHIPS

QUESTION: Captain Leback, both Senator Rudman and I have Navy shipyards in our States. These yards are truly national assets that possess skilled personnel with unique skills and facilities that simply cannot be replicated. Yet, Navy workload is declining, and the Navy is considering significant work force cutbacks.

1. How much MARAD RRF workload is performed at Navy shipyards?

2. Could you perform more of your workload -- laying up and exercising ships -- at Navy shipyards? Could some NDRF ships be upgraded to RRF status at these Navy shipyards?

3. Why aren't either Charleston or Portsmouth used to homeport or "outport" MARAD RRF vessels? These are both good deep harbors with excellent port and Navy repair facilities? Frankly, DESERT STORM you probably found MARAD RRF vessels journeying from Virginia or Texas to Charleston to be loaded and then head out for the Persian Gulf.

ANSWER: 1. In general, MARAD does not use Navy shipyards for the RRF program.

2. Use of Navy shipyards would be governed, in part, by the policy enunciated in OMB Circular A-76 which states that the Federal Government shall rely on commercially available sources to provide commercial products and services including maintenance, overhaul, repair and testing of ships. Maintenance, overhaul, repair and testing of the merchant ships in the Ready Reserve Force clearly falls within this policy.

In addition, Navy shipyards specialize in the repair, overhaul and maintenance of combatant ships to meet Navy standards using DoD specifications, supply systems, suppliers and contractors and their work is not subject to inspection and approval by regulatory agencies such as Coast Guard, Public Health Service, and the Federal Communications Commission as well as the American Bureau of Shipping. Merchant ships must be maintained to meet classification requirements of the American Bureau of Shipping and certification requirements of the U.S. Coast Guard and use commercial specifications, suppliers and subcontractors and are subject to inspections by various regulatory agencies. The Navy shipyards do not work in a commercial ship environment and it has not been worth it to them to make the management investment for these smaller jobs.

3. DoD provides the requirements and general guidance for outporting of ships and also makes the determination as to the availability and use of their facilities for this purpose. MARAD has outported ships at DoD facilities when they are available.

DEFENSE SEALIFT PRIORITIES

Captain Leback, for years the Congress has been telling the Department of Defense that is giving short shrift to sealift. Billions are requested for the C-17 and airlift, while nothing is requested for sealift.

1. Have you seen any change in the Department of Defense's attitude toward sealift since OPERATION DESERT SHIELD began?

2. Other than the funds Congress added in the Department of Defense budget for building sealift vessels in FY 1990 and FY 1991, will any sealift construction be in the Defense budget?

3. What role does the Department of Defense play in the acquisition of ships for the RRF?

4. To your knowledge, has the Administration ever considered using MARAD's budget for acquisition of new sealift ships?

ANSWER: 1. From our perspective, DoD has always recognized the requirement for sealift in their planning and has given it due consideration in their resource planning.

2. MARAD is not aware of the DoD budget for sealift construction.

3. DoD/Navy provides the overall guidance for the mix of ships in the RRF to meet DoD requirements. MARAD and Navy have a continuing dialogue as to general availability of ships and the priority of use of available financial resources. In addition, DoD/Navy is invited to participate as members of the panel that finalizes solicitations for additional RRF ships.

4. MARAD is not aware of its budget having been considered for acquisition of new sealift ships.

MERCHANT MARINE MANPOWER

Captain Leback, you trained to be a merchant marine office during the Second World War when the United States was a merchant marine power with thousands of men trained as seamen. The situation now is quite different for the U.S. maritime industry -- with a declining number of vessels and manpower pool. I understand that we are now down to about 12,000 merchant marine jobs.

1. During the first weeks of the Persian Gulf crisis, the media carried stories about old, retired mariners going back to sea. How bad is the merchant marine manpower situation? What are the National security implications?

2. What solutions do you recommend to increase the number of U.S. merchant marine personnel?

3. How much of a difference do the Merchant Marine Academy and State academies make?

ANSWER: 1. Some problems and some delays were experienced in obtaining the required numbers of qualified people during some of the activations of the Ready Reserve Force (RRF) ships and other sealift ships when crewing had to be accomplished during the highly compressed time frame of an activation. The maritime unions have been able to supply sufficient qualified personnel for DESERT STORM/DESERT SHIELD, but not without enormous effort. Many hundreds of these critical jobs have been filled by retirees and others permanently ashore. An inability to locate sufficient people immediately inevitably led to some delays in activating RRF ships. All RRF ships activated have been crewed, and replacements have been available. However, the labor unions, our chief source of personnel, were severely pressed to do the job. In some cases, activations were delayed because key crew members were not immediately available. Had we been required to activate the entire RRF simultaneously there would have been serious crew shortages and activation delays.

One key structural problem is the matter of so-called "re-employment rights." Merchant seamen are civilians in all regards, and as such they do not enjoy the job protections afforded military reservists (38 U.S.C. 2021 et. seq.) who are recalled to active duty. In crewing our RRF ships, the existence of reemployment rights would have opened-up potentially large numbers of available seafarers working ashore. The Administration is considering this inequity and we expect a comprehensive bill to the introduced shortly.

I am deeply concerned about the near term future (5-10 years). Every recent study of mobilization requirements on the maritime labor force yields the same conclusion: we will have severe shortages of trained and available personnel. Given what I have seen in our present RRF activations, I have concluded that the predicted shortages will appear sooner and will be larger than previously predicted.

2. The best and most effective solution to this critical manpower problem is to have a sufficiently large and robust private merchant fleet, providing long term employment opportunities. Our concern focuses on the clear downward trend in maritime employment. Even if this industry experiences considerable fleet renewals in the near term future, there are likely to be fewer jobs on board ships. If we are to continue to be able to crew RRF ships for future contingencies (which may very well be more strenuous than the current Persian Gulf war) or a general war scenario, then some means of assuring crew availability must be found. We are examining that matter now including consideration of establishing a civilian merchant marine reserve.

In addition, we are also proceeding with proposed legislation to establish "reemployment rights" similar to those afforded recalled military reservists.

3. The Merchant Marine Academy and the State marine schools are the primary source of newly licensed officers and as such are very important to the U.S. merchant marine. The output of these schools is more than sufficient to meet peacetime employment requirements. However, these schools do not play a role in providing unlicensed personnel or radio officers where shortages also occurred during DESERT SHIELD/STORM.

READINESS OF NAVY VERSUS MARAD SEALIFT

QUESTION: Please compare MARAD RRF ship readiness with U.S. Navy sealift ships, such as the SL-7 ships. How many full-time personnel support those Navy ships? How often are the Navy ships exercised? What are their annual per ship operating costs compared with the RRF?

ANSWER: This information is not available to the Maritime Administration and should be obtained from the Military Sealift Command.

QUESTION: Have you examined putting a portion of the RRF fleet in a higher state of readiness -- that is making a few MARAD ships more like the Navy's sealift ships? What would it cost?

ANSWER: The Department of Defense/Navy provides the readiness requirements for ships in the RRF. These are developed from Navy contingency plans and the anticipated timing of the requirement for RRF ships. The higher the state of readiness and the requirement for full-time personnel would increase annual costs to a level far exceeding that currently required for RRF ships. The general planning assumption up to now has been that the RRF will come into play after the pre-positioned ships and the fast sealift ships.

RRF ACQUISITIONS

In FY 1991, Congress appropriated $49.4 million for the acquisition of 5 RRF ships. In FY 1992, you are requesting $104 million for 6 RRF ships.

QUESTION: What is the mix of ships -- roll-on-roll-off versus tanker or cargo ships -- in your plan? Why does an additional $55 million only buy one more ship?

ANSWER: Funds requested for Fleet Additions are expected to provide 7 additional ships of which 6 are planned for delivery in 1992. The seventh is a crane ship, T-ACS 11, which is not expected to enter the force until 1993. Currently, planning calls for 2 Ro-Ro's, 2 tankers, 1 breakbulk, and 1 heavy lift to be delivered in 1992 and the T-ACS 11 to be delivered in 1993. The additional $55 million will provide only two more ships because of the higher cost anticipated for Ro-Ro's and heavy lift ships, and the significantly higher cost of the T-ACS upgrade and conversion which is estimated at $37 million for one ship. Fleet Addition plans to achieve a 142 ship RRF fleet by 1994 with no change in the mix of vessels as a result of Operation DESERT STORM experience leaves 30 additional vessels to be acquired during FY 1993 and FY 1994 at an average cost of approximately $14 million per vessel.

However, the logistics requirements of Operation DESERT STORM coupled with the continuing decline in the U.S. Merchant Marine has caused the Administration to reassess the size and more importantly the composition of the RRF. The planned expansion of the RRF fleet over the next 3 fiscal years warrants acceleration in order to meet strategic surge sealift needs. The utility of roll-on-roll-off (Ro-Ro) vessels has become paramount to DOD sealift planners and the existing 17 Ro-Ro's in the RRF are insufficient to meet demands for carriage of large vehicles and tracked equipment. The stated need of seven additional Ro-Ro's for the RRF within the existing 142 ship goal mix is only about one-third of the DOD desired additional Ro-Ro capacity of the RRF.

The FY 1991 RRF appropriation for fleet additions coupled with our FY 1992 request in that area provides about $150 million. The cost to purchase the available Ro-Ro's is estimated to be an average of $25 to $35 million per vessel.

QUESTION: In today's DESERT STORM market -- is it realistic to assume that MARAD can acquire 5 sealift ships for $49 million?

ANSWER: Shortly after the hearing on the 1992 appropriation, DESERT STORM was brought to a successful conclusion and the DoD started to return the forces to their home bases. With the wind down of DESERT STORM there is the possibility of a buyers market and the acquisition of 5 ships at a cost of approximately $49 million is not unrealistic.

QUESTION: In the short-term, have you explored upgrading the best National Defense Reserve Fleet ships to RRF standards? Couldn't you add 15 to 30 RRF ships by using this strategy rather than bidding on the open market? Are there 15 to 30 ships in the National Defense Reserve Fleet worth upgrading?

ANSWER: The DoD goal of 142 ships is the aggregate of a subset of specific ship types. The DoD provides guidance as to the priority of reaching these goals within the availability of ships on the market and in the NDRF. The highest priority is for additional self-contained Ro-Ro's with heavy stern ramps and heavy lift ships and there are none of these in the NDRF. In fact, there may be only 30 Ro-Ro's suitable for military use still available in the world. Further, there is a requirement for conversion of additional specialized ships such as two additional crane ships (T-ACS) and offshore petroleum discharge ships (OPDS) which may require hulls not currently in the NDRF. The composition of ships in the NDRF and RRF is frequently reviewed by DoD planners as to their utility for contingency and general war scenarios with due regard to the potential availability of active ships.

All active retention ships are assumed to be capable of being brought up to RRF status or activated. However, the DoD does not currently have a requirement for them to be in an advanced state of reactivation readiness for contingencies such as DESERT STORM/SHIELD but considers them as the final backup in a general war scenario.

QUESTION: How much would it cost, rough estimate, to construct a new roll-on-roll-off ship in an American shipyard?

ANSWER: A very rough estimate is $200 million per ship.

STATE ACADEMY TRAINING SHIPS

We understand that several STATE merchant marine schools are in the market for training ships.

QUESTION: State by State, what are these Merchant marine school requirements?

ANSWER: Massachusetts and New York have recently converted ships for use as training ships. The California ship is over 50 years old; the Texas ship is nearly 50 years old; and Maine has a ship that is over 35 years old. Replacement ships would have to be sized to carry the following estimated crew, staff and students:

School	Crew and Training Staff	Students
California	50	300
Maine	70	300
Texas	50	170

QUESTION: Can ships in the NDRF or RRF meet their requirements?

ANSWER: Since there are no suitable troop ships in the NDRF or RRF, any ship would require significant conversion to make it usable as a training ship.

QUESTION: Can any Navy vessels meet their requirements? What type of Coast Guard waivers would be required to use a Navy ship? Can these be granted administratively or is legislation required?

ANSWER: All Navy ships would require additional modification to be usable as a training ship in order to meet ABS classification and USCG certification requirements.

Classification by the American Bureau of Shipping and certification by the Coast Guard are an independent validation of the safety of a ship and are required by MARAD and USCG to insure that the ships are safe and seaworthy. Any type of waiver would require establishment of standards acceptable to the State schools and the Maritime Administration. These ships carry individuals who are in a training status and do not have the level of close supervision that exists on Navy ships when officers and senior supervisory enlisted personnel are taken into consideration. MARAD generally would not support wholesale waivers of these requirements. We are interested in working constructively with the Coast Guard and the State schools to meet the schools' needs with safe vessels.

SECURITIES AND EXCHANGE COMMISSION

STATEMENT OF RICHARD C. BREEDEN, CHAIRMAN

OPENING REMARKS

Senator HOLLINGS. We now go to the Securities and Exchange Commission.

The Securities and Exchange Commission is one of those domestic discretionary agencies that did well under the President's budget. Taking into account the proposed fee changes, the agency's budget request is $225.8 million, an increase of $68 million or 43 percent over current appropriations.

We are delighted to have our distinguished chairman, Mr. Richard C. Breeden.

Senator HOLLINGS. We want to thank you and your associates here for appearing before the subcommittee today, and let us see if we can get these fees earmarked. I want to hear from you because I do not want these fees to go into the general fund. The administration is playing the game, and we need the money, and I know you need the money, and there is no use to increase your fees simply for the deficit. I want to increase the fees for the Securities and Exchange Commission. Thank you, Chairman Breeden.

Senator RUDMAN. Maybe you would like to close the hearing on that note. Hit the gavel. [Laughter.]

Senator HOLLINGS. That is what we want to do, is that not right?

Senator RUDMAN. We agree.

SUMMARY STATEMENT

Mr. BREEDEN. Senator Hollings, thank you very much. I commence, and hopefully, that we can stay on that very useful note at the outset. Senator Rudman, I am very pleased to be here this morning to present our fiscal 1992 budget request of $225.8 million. That request, as you indicated, represents a substantial increase of $38.3 million or about 20 percent over what we hope will be our total funding this year and, as you know, we are in a position this year of being partially funded by fees and partially funded by appropriations offset by fees going into the Treasury, and we hope that we will end up with $187 million this year, so we certainly, at this point in the game, have to follow that week by week to see where we will actually end up.

Over the past decade, dramatic changes and innovations have transformed the securities markets in the United States, resulting in substantial demands and pressures on both the markets as a whole and the Commission. As of today, total equity market capitalization is about $3.5 trillion, which is held by more than 50 million Americans.

In October 1990, Congress enacted two major pieces of legislation affecting the Commission and our responsibilities. These were the Market Reform Act of 1990 and the Securities Enforcement Remedies and Penny Stock Reform Act.

These two pieces of legislation together represent one of the most significant changes in the securities laws in the last several decades.

MARKET REFORM ACT

Among other things, the Market Reform Act requires the Commission to assess the financial risks of parent holding companies and other affiliates of broker-dealers. This reflects, in part, the experience of Drexel Burnham, where a massive failure of a $28 billion institution occurred with the insolvency not occurring in the regulated firm, the broker-dealer, but in the unregulated parts of the company, the parent organization.

Under the Market Reform Act, for the very first time in its history, the Commission will have the responsibility for monitoring the financial condition of the entire organization, not just the broker-dealer subsidiary, but its parent company and any other corporate affiliates, to try and form a picture of the risk of the overall organization, reflecting the marketplace reality that the entire organization will prosper or the entire organization will fail. Knowing about the condition of only one portion of that organization is a very artificial way to conduct regulation.

However, getting a handle on the risk profile of the overall holding company organization will represent a substantial challenge to us. To place it in perspective, the total assets of the holding companies of just the 14 largest firms were about $1.1 trillion as of year-end last year. So there is a substantial volume of business activity going on relating to broker-dealers that we have not, heretofore, had responsibility for monitoring.

The budget request before you this year includes $9 million for the initial development of two computer systems which we would hope to use in the screening of these holding companies and their affiliates.

We would expect that full implementation of this act will require some modest additional staff and procurement funds over the next couple of years.

Though it does represent an increase, I should interject that I believe that this statute passed by Congress will represent an enormous contribution to the overall stability of the system. We saw a massive failure occur out of the unregulated parts of these companies, and though there will be some very modest cost in overseeing and monitoring to discover when there are fires burning in the nonregulated parts of these companies, I think that is a very prudent investment for the stability of the overall system.

SECURITIES ENFORCEMENT REMEDIES AND PENNY STOCK REFORM ACT

Similarly, the Remedies Act has greatly expanded our enforcement capabilities by authorizing us for the first time to impose monetary fines outside of the insider trading area. There again, I think that is an extremely sensible step and one that we were very pleased to work with the Congress to develop.

We want to take the profit out of defrauding customers of securities firms. Though we have long been able to impose injunctions for violations of securities laws, sometimes taking away the profit may help to remove the incentive to engage in that kind of conduct in the first place.

Because we expect that tougher penalties will result, we do expect there will be an increase in litigation for these things. People will be less willing to settle cases without litigating because they are not going to be getting a slap on the wrist anymore; there will be some tougher penalties. So the budget does involve a small request for additional litigation staff as well as some additional staff in the enforcement area.

In fiscal 1992, we will be working toward a goal of conducting exams of the 20 largest New York Stock Exchange firms at least once every 2 years.

Those 20 firms represent by far the lion's share of the customers in the securities business, and we think that an examination cycle of once every 2 years is very much appropriate for overseeing the activity in those firms.

INVESTMENT MANAGEMENT

Similarly, we are trying, in the investment company area, to move toward a system where at least once a year we examine some of the activities of all funds in each of the 100 largest fund complexes. As you know, a mutual fund complex often has a great many individual mutual funds, and we want to attempt to examine each of the funds every year. At a minimum, we think we ought to have an onsite exam of at least some of their activities each year.

The investment management program provides a concrete example of the growth in the Commission's responsibilities as well as the growth in our staffing requirements. In 1980, investment companies under the Commission's oversight had about $160 billion in total assets. In 1992, we project that we will be overseeing 3,550 investment companies with assets of about $1.4 trillion. Indeed, mutual funds have, in many respects, become by far the most popular, common vehicle for average investors, ordinary individual citizens, to participate in the securities markets. Both money market funds and equity funds have become very popular and widely used instruments for personal investing, and we think it is very important that we maintain oversight over the practices of those funds to ensure the continuation of the superb record of safety and absence of fraud that we have had to date.

The growth I mentioned, though, has been, since 1980, a growth in assets; next year we will be looking at assets nine times greater than what we did in 1980. Our budget will be about 3½ times greater than it was in 1980, and our staffing about 1.6 times greater, so that while there have been increases, we have hardly kept pace with the volumes of assets under our oversight.

We think some increase here is very prudent and will help us do the job that needs to be done.

By way of very brief comparison, the Office of Thrift Supervision, OTS, oversees a somewhat smaller number of firms, about 2,400 thrifts holding a smaller amount of assets, about $1 trillion compared to the $1.4 trillion we oversee. Their proposed budget for next year is 2,700 people and $225 million in expenses.

We propose under the budget, even with the proposed increase, to be spending $25.4 million on an even larger number of companies and assets and have 320 staff to do it with, so that that is about 10 percent of the funding and 12 percent of the staffing that OTS would have for a slightly smaller program.

I hasten to add, I am not suggesting that OTS does not wisely spend the resources they have. There are a great many differences between examining a loan portfolio and examining an investment company, but I think it does help to draw the point that we have an enormous assignment. I think we do it very efficiently. If anything, we still do not have what I would characterize as perhaps as many people in some areas as we should, but I think the Committee has been extraordinarily helpful in working with us over the last few years to try and move our staffing up on a gradual basis and at a rate that we can absorb so we can hire and train good people.

PREPARED STATEMENT

I think, hopefully, the investment has been well spent so far. I certainly look forward to working with the committee as we look at both the 1992 budget and beyond.

[The statement follows:]

STATEMENT OF RICHARD C. BREEDEN

Chairman Hollings and Members of the Subcommittee: I am pleased to appear today on behalf of the Securities and Exchange Commission (Commission) to present its fiscal 1992 budget request of $225.8 million. President Bush's request represents an increase of $38.3 million, or 20 percent, over the 1991 budget authority of $187.5 million.[1] At the outset I would like to acknowledge with deep appreciation the support that this Subcommittee and its staff have provided the Commission. We certainly appreciate the competitive demands for resources and the difficulties presented by the current budget situation. I assure you that the Commission is very effective in its use of resources, and I am confident additional budgetary resources requested for the agency are justified fully.

Over the past decade, dramatic changes and innovations have transformed the nation's securities industry and U.S. capital markets. Many different forces are resulting in tremendous demands and pressures on the securities markets and the Commission. These include the growing complexity of U.S. markets, increasing interdependence of the world's markets, and continuing aftershocks of the October 1987 market break and the decline of October 1989. Other factors that have exposed serious "fragility" in the financial services industry include the failure of Drexel Burnham Lambert Group, Inc., the widespread and continuing problems of insolvent savings and loans, and the serious problems of U.S. banks. As a result of these factors, the Commission must monitor closely the activities of broker-dealer affiliates and parent companies. In addition, newly enacted legislation provides substantial authority and responsibility for the Commission to deal with many of these developments and adds to the challenges facing the Commission and its staff.

Widespread public concern over the fragile financial services industry makes it imperative that the Commission has sufficient resources to protect investors and to provide the stability needed to promote low cost capital formation. In meeting both its traditional missions of protecting investors and maintaining market stability and integrity, as well as the substantial new responsibilities, the Commission needs additional budgetary resources.

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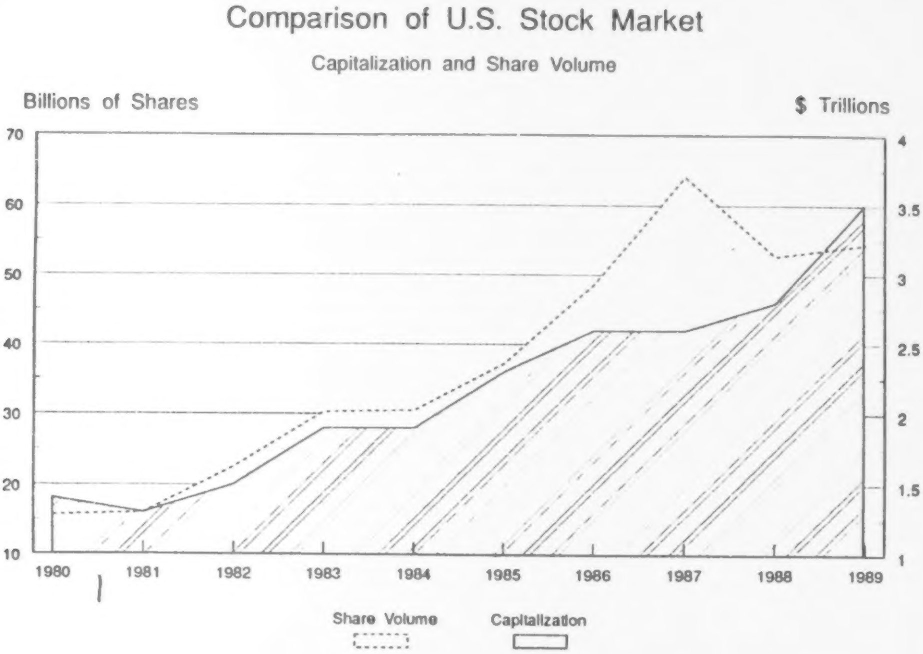
[1] The Commission may or may not receive $187.5 million due to the fact that $30 million of the total is subject to collection based on a portion of fees collected by the agency during fiscal 1991.

MARKET GROWTH AND COMPLEXITY

During the 1980's, financial instruments grew rapidly in complexity, volume, and availability. Domestic and transnational trading volume reached record highs. Professional organizations and firms subject to Commission oversight increased dramatically in number, size, and diversity. In 1981, the total U.S. equity market capitalization stood at approximately $1.3 trillion. As of today, total market capitalization of approximately $3.5 trillion was held by more than 50 million Americans. This growth represents a 169 percent increase in just eight years. Along with this phenomenal growth in the value of U.S. equities, trading volumes in virtually all U.S. markets expanded dramatically. Between 1980 and 1989, for example, annual over-the-counter share volume in securities quoted on the National Association of Securities Dealers' automated quotations system increased five-fold from 6.7 billion shares to 33.5 billion shares. Annual share volume on securities exchanges more than tripled from 15.6 billion shares to 54.4 billion shares during the same period. The growth of U.S. securities exchange share volume and market capitalization between 1980 and 1989 are shown in the following graph.

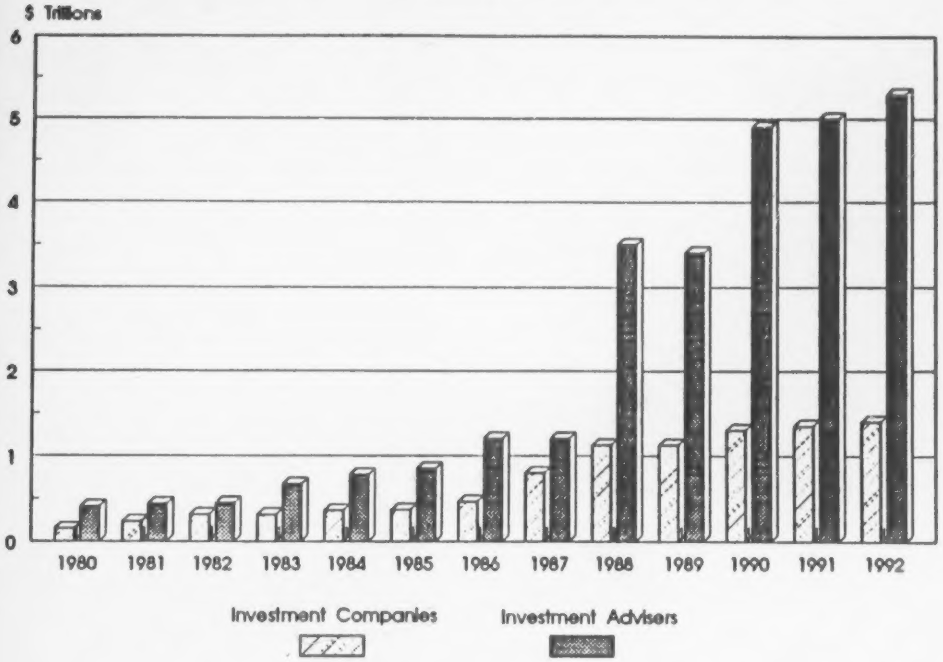


The 1980's saw the value of foreign trading in U.S. stocks grow from $75 billion to $414 billion, a 452 percent increase, and U.S. trading in foreign stocks expanded from $18 billion to $206 billion, a 1,044 percent increase.

These trends have affected all segments of the securities industry, including broker-dealers, investment companies, and investment advisers. The number of registered broker-dealer firms, which is currently 10,500, has increased 54 percent since 1980. These firms have approximately 30,000 branch offices and 417,000 registered representatives. Between 1980 and 1990 the number of investment companies (IC's) more than doubled to 3,535, and the number of investment advisers (IA's) nearly quadrupled to 17,386. As shown on the following graph, the assets under management by IC's and IA's reached $1.3 trillion and $4.9 trillion, respectively, in 1990 and continues to grow.

Investment Advisers & Investment Companies

Assets Under Management



Mutual funds alone have grown from total assets of $95 billion in 1980 to over $1.1 trillion today. The staffing and budget levels of the Commission have expanded in the face of this explosive growth in markets, though the Commission's resource growth has been far smaller than the growth in the markets. For example, under the proposed budget, each staff examiner in the IC program will be responsible for $11.7 billion of IC assets. This is 46 percent higher than the $8 billion of assets each examiner was responsible for in 1983.

Markets for new and more complex products are rapidly emerging. In the past six years exchange trading was initiated for options contracts on a variety of debt instruments, market indexes, and foreign currencies. Hybrid instruments, such as debt instruments with principal or interest payments pegged to stock market movements, have proliferated. Investment companies have created different classes of shares in a single fund, where each class typically has a different sales load or dividend policy. Furthermore, new strategies such as program trading have become commonplace, requiring more sophisticated analysis of their market impacts.

Since early 1990, the staff has closely supervised the liquidation of Drexel Burnham Lambert Group and its broker-dealer subsidiary. At the time of Drexel's failure, the broker-dealer had more than 30,000 public customer accounts, which held approximately $5 billion in securities. The active role of the Commission in the liquidation of the parent firm with assets exceeding $28 billion was instrumental in preventing investor and Securities Investor Protection Corporation (SIPC) losses. It also protected the market from instability at no cost to the American public or the federal budget beyond normal agency resources. This compares with an estimated $2.3 billion loss to the FDIC from the failure of the Bank of New England, though that institution had $6 billion less in assets than Drexel.

Enforcement cases against securities law violations also have become more time consuming and complicated. In the settlement reached with Michael Milken, a defendant in *SEC* v. *Drexel Burnham Lambert Inc., et al,* he agreed to pay $600 million—$200 million for criminal fines and penalties and $400 million for civil disgorgement to pay claims filed by public investors and others. In November 1990, Milken was sentenced to ten years imprisonment, as well as probation and community service. Litigation continues against four remaining defendants in related cases.

In another case, an examination of Stotler & Company, which had been one of the nation's top 10 futures brokerage firms, revealed that it had engaged in the sale of government securities without NASD membership as required by law. Stotler also failed to maintain SEC-mandated capital reserves. The Commission's investigative results were provided to the Commodity Futures Trading Commission, and both agencies took enforcement action leading to the liquidation of Stotler Group, Inc. and two of its chief subsidiaries.

NEW LEGISLATIVE MANDATES

In October 1990, the Market Reform Act (Public Law 101–432) and the Securities Enforcement Remedies and Penny Stock Reform Act (Public Law 101–429) became law. Collectively, these Acts represent among the most significant changes in the securities laws in decades. Implementing the provisions of these Acts will be challenging, as well as necessitating substantial additional resources for the Commission.

THE SECURITIES ENFORCEMENT REMEDIES AND PENNY STOCK REFORM ACT (REMEDIES ACT)

The Remedies Act greatly expands the Commission's enforcement capabilities by authorizing monetary penalties in both civil and administrative proceedings. Until the Remedies Act was passed, civil monetary penalties were available only under the Insider Trading Sanctions Act of 1984 and the Insider Trading Enforcement Act of 1988. The Commission did not have the authority to fine a securities firm or persons associated with it, such as registered representatives. The only remedies were censure, a limitation on activities, or a bar from the securities industry. The Remedies Act permits much more flexibility and addresses the problem of recidivism by adding a monetary cost to violating the securities laws.

The Remedies Act also authorizes the Commission to bring administrative proceedings to obtain cease-and-desist orders against, and impose disgorgement on, any person for violations of the federal securities laws. This authority permits swift remedial action in response to illegal conduct that might not otherwise be possible due to congested federal court dockets.

The penny stock provisions of the Remedies Act authorize the Commission to improve disclosure to investors of the risks of investing in penny stocks and to bar securities law violators from participating in future offerings of penny stocks. The Remedies Act will contribute to the Commission's ability to fight penny stock fraud that victimizes the individual investor. The new civil monetary penalties should be especially useful in combatting fraudulent penny stock promoters due to the threat of swift and severe economic sanctions.

As a result of these new authorities conferred by the Remedies Act, it is anticipated that more enforcement proceedings will be contested both in court and in the administrative forum, and that the duration and complexity of settlement negotiations and litigation will increase somewhat from current levels. These trends are likely to add to the Commission's resource burden. For example, it is anticipated that contested litigation will increase by at least 20 percent, and that demands on staff time resulting from settlement negotiations will increase by as much as 5 percent. The fair and ethical administration of justice will require additional staff resources to review initial decisions from administrative law judges and to prepare opinions for the Commission. Also, the staff will increase the number and scope of inspections of self-regulatory organizations' programs and member firms to determine their effectiveness in enforcing compliance with the rules adopted by the Commission to curtail fraud and enhance disclosure in penny stock and blank check offerings.

THE MARKET REFORM ACT OF 1990 (MARKET REFORM ACT)

The Market Reform Act provides the Commission with important new tools to monitor and promote stability in the securities markets. The Commission is required to adopt reporting rules for the purpose of monitoring the impact of large transactions upon the securities markets and to assess the risks to broker-dealers resulting from the financial activities of their unregistered affiliates. The legislation also allows the Commission to suspend trading during a market emergency, to restrict trading practices in equity securities during periods of extraordinary market volatility, to preempt state laws governing the transfer and pledge of securities where necessary for the safe and efficient operation of the national clearance and settlement system, and to coordinate initiatives with other federal financial regulatory agencies.

Implementation of the Market Reform Act will require an estimated $9 million in fiscal 1992 for the initial development of two computer systems to compile and analyze risk assessment information and large trader data. The risk assessment system will require an estimated $5 million of the $9 million in fiscal 1992, and will most likely require a full development period of four years. The Commission will be establishing an early warning system to detect broker-dealer holding companies that may be facing significant financial risks. The staff will monitor and evaluate certain financial activities such as bridge loans, foreign currency trading, and interest rate swaps of affiliates of broker-dealers. A substantial portion of this evaluation will be facilitated by the computer system, which will receive and process electronically financial reporting data from U.S. and foreign broker-dealer holding companies, and will be programmed to perform risk assessment analyses of these data. This information is particularly critical during periods of market instability. To place the risk assessment program in perspective, the total assets of holding companies of the 14 largest broker-dealers were $1.1 trillion as of December 1989.

The large trader reporting system, which we estimate may require up to $4 million of the $9 million for fiscal 1992, will enable the Commission to receive, process, and analyze electronically the transaction data of large traders. This system is a key feature of the Market Reform Act, as block and portfolio trading and other institutional strategies account for an increasing proportion of total market activity. In 1988, block trades of 10,000 or more shares constituted 54 percent of New York Stock Exchange (NYSE) volume. At present, the Commission does not have access to information regarding large trader activities. With the information, adjustments in the system can be made to facilitate the orderly functioning of the markets. In addition, this information will help the Commission and the self-regulatory organizations (SRO's) detect manipulative and other abusive trading activities. Both computer systems and the requisite rulemaking initiatives will require additional resources to implement.

INTERNATIONALIZATION INITIATIVES

The agency's law enforcement and oversight efforts can no longer be confined solely to the U.S. because conduct outside the country may harm domestic markets. Violations of securities laws against insider trading or market manipulation can easily be routed through foreign markets, whether the ultimate participants reside in the U.S. or overseas. The Commission has and will continue to negotiate bilateral information-sharing understandings and agreements with various foreign governmental authorities that facilitate the staff's efforts to obtain evidence located abroad for both investigations and litigation.

More generally, the U.S. has an enormous stake in the development of international policies concerning clearance and settlement systems, disclosure policies, accounting practices, information exchange, law enforcement, and broker-dealer capital and registration standards. Developing a multinational regulatory structure for the securities markets and market participants will require active leadership by the Commission. As European markets become more unified, the Commission must have the capability to participate actively in dialogue with our European counterparts to ensure that U.S. institutions are treated fairly in this process, and that U.S. financial firms remain competitive in the global market.

One way the Commission is achieving greater safety in the global securities markets is through active involvement in the International Organization of Securities Commissions (IOSCO). IOSCO is the only multinational organization of the world's securities regulatory authorities. The Commission will be hosting the 1991 annual conference of IOSCO this September in Washington, D.C. For the past year, I served as the Chairman of IOSCO's Executive Committee. For the next two years, I will be serving as Chairman of the IOSCO Technical Committee, which is the principal standard-setting authority within IOSCO.

In addition, other international initiatives by the Commission such as the Emerging Markets Advisory Committee (EMAC) and the International Institute for Securities Market Development (Institute) are designed to help countries in eastern Europe and around the world restructure or develop their financial sectors. The EMAC advises the Commission on how best to utilize its resources to assist foreign regulators. Commencing this year, the Institute will conduct actual training programs for foreign regulators. This program will be supported by several international development organizations, and participants from more than 26 countries are currently scheduled to attend. U.S. AID and other organizations are helping these developing nations defray the costs of travel and lodging for participants at the Institute. The Commission will provide instructors and materials for the Institute out of normal agency resources. However, the Commission will not provide any direct assistance to participants to defray their attendance costs.

As foreign securities markets grow, they will provide U.S. investors and securities firms with valuable new investment and business opportunities. The securities markets themselves, and their major participants, are increasingly global in scope. As a result, when promulgating rules and making other regulatory decisions, the Commission must consider the effect its decisions will have upon the ability of foreign participants to enter our markets, and on the ability of U.S. firms to compete in other markets.

As further evidence of the importance of the globalization of the securities markets and initiatives in this area by the Commission, the Securities Act Amendments of 1990 gave the Commission additional authority to improve coordination of international enforcement efforts. The Commission now is able to maintain the confidentiality of certain information and allow greater sharing of nonpublic information among enforcement officials. It is anticipated that this new authority will greatly facilitate the flow of foreign requests for Commission legal assistance and, conversely, Commission requests for foreign legal assistance. As a result, the overall level of foreign interaction and cooperation is expected to increase significantly.

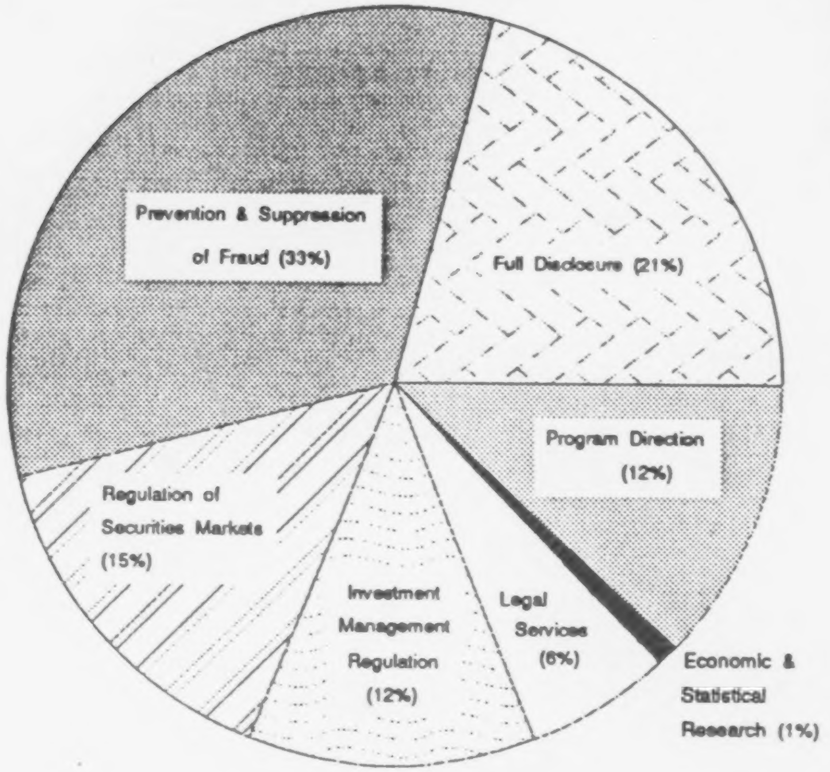
PROGRAM REQUESTS

I will now briefly review the individual program requests for fiscal year 1992. While much of the increase is due to the recently enacted Remedies and Market Reform Acts, the continued growth and changes in the financial markets make it a necessity that the Commission obtain additional resources to keep pace with the industry and develop a cadre of expert staff in all of these activities.

The 1992 budget of $225.8 million represents an increase of $38.3 million over the agency's 1991 budget authority level of $187.5 million. The increase includes $13.8 million for mandatory personnel costs and other nondiscretionary increases, including: $2.9 million for mandatory salary and personnel benefits; $1.6 million for annualization of new 1991 positions; $1.7 million for annualization of 1991 pay raises; $3.8 million for a pay raise in 1992; $2.1 million for Pay Reform Act costs, which include comparability increases in Los Angeles, New York, and San Francisco; and $1.7 million primarily for inflation and contractual price changes.

An additional $24.5 million will be used to fund program increases, including 320 positions necessary to carry out the Commission's workload. This is a 12.3 percent increase over the number of positions authorized in 1991. The distribution of all positions by major program within the Commission is shown in the below chart.

FY 1992 Positions by Major Program



PREVENTION AND SUPPRESSION OF FRAUD

Fast-paced and dramatic market events have created new and enticing opportunities for fraud and abuse. The need for strong deterrence against violations of the securities laws is particularly acute in today's highly charged environment. The Commission has channeled considerable resources into two special categories of misconduct that have been of particular public concern. These are depository institutions (both banks and savings and loans) and the penny stock market. The Commission estimates that tens of thousands of investors have lost over $10 billion due to the failure of banks and thrifts in the past five years. A special unit within the Division of Enforcement is dedicated to investigating possible securities laws violations by financial institutions and their officers, directors, and other persons associated with the banking and thrift business. This unit is investigating financial fraud involving false financial statements and misleading disclosures in filings by publicly-held financial institutions and holding companies, as well as the full range of other potential securities violations by persons associated with the financial institutions, including insider trading.

In December 1990, the Commission obtained injunctive relief through a settlement of Commission charges in U.S. District Court alleging that the Bank of New England Corporation (BNEC) fraudulently understated its allowance of loan and lease losses and made materially inaccurate disclosures regarding the impact of adverse trends on its future operations. This action sends a strong message that the Commission will pursue vigorously instances of false and misleading information contained in financial statements of banking institutions.

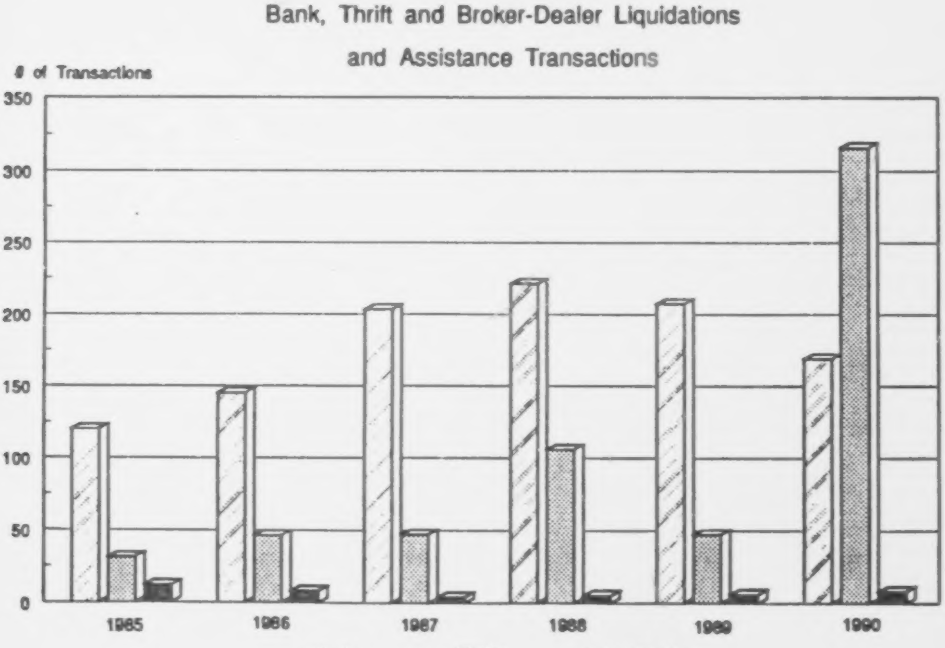
Penny stock fraud has spread throughout the U.S. and the rest of the world. This type of fraud involves complex market manipulation schemes with trading accounts held in the names of real and fictitious individuals and entities. The Penny Stock Task Force, created in fiscal 1989, is dedicated to investigating and prosecuting securities fraud by participants in the penny stock market. For example, the litigation *In the Matter of Stuart-James,* a case alleging fraud and misconduct by one of the nation's largest penny stock dealers, has required extraordinary Commission resources. It is estimated the proceeding will involve over 100 trial days.

The Commission is dedicated to continuing its special emphasis on fraudulent activities that directly affect investor confidence, such as broker-dealer fraud and fraud in connection with the activities of banking and thrift institutions. The additional resources requested for enforcement will be devoted to investigating cases in which the U.S. markets are compromised by conduct offshore, pursuing vigorously wrongdoers who act to avoid detection or escape prosecution, and obtaining appropriate relief from violators.

In total, this program is requesting an increase of 124 positions (15 percent) to perform its critical functions.

SUPERVISION AND REGULATION OF SECURITIES MARKETS

A major effort will be required to implement the Market Reform Act over the next several years. The staff will examine and monitor thoroughly the capital risks and exposures presented by the major securities firms. A regulatory framework for monitoring large trader activities and penny stock transactions must be developed, and the staff will increase the number and scope of inspections of SRO programs and member firms to determine their effectiveness in enforcing compliance with new penny stock disclosure and blank check offerings. The Commission intends to broaden its coverage of the broker-dealer and transfer agent examination programs, and will begin working toward its newly stated goal of conducting biannual examinations of the 20 NYSE member firms carrying the largest number of customer accounts. Overall, the Commission's regulatory program has been effective in maintaining the stability of the securities markets and regulated broker-dealer firms. In comparison to the banking and thrift industries, broker-dealers have suffered significantly fewer failures as shown by the below graph.


Bank, Thrift and Broker-Dealer Liquidations and Assistance Transactions

The Commission must maintain its leadership role in creating an integrated multinational regulatory structure for securities markets worldwide. In addition, the

Commission must keep pace with the expanding responsibilities of the SRO's, including analysis and evaluation of a wide array of interconnected automated systems to determine the effectiveness of SRO trading, surveillance, and transaction settlement procedures and programs.

In total, this program is requesting an increase of 84 positions (25 percent) to implement these essential requirements.

INVESTMENT MANAGEMENT REGULATION

Significant new efforts are planned for the investment management program. In this area factors such as tremendous industry growth, rapid changes in products, and internationalization have created the need for greater staff resources. Assets of investment companies (IC's) are expected to reach $1.4 trillion in 1992, an increase of 344 percent from the $315 billion in 1983. Money market mutual funds alone hold approximately $500 billion in short-term liquid assets. This growth has made the IC industry as important to the health and efficiency of the overall U.S. financial markets as banks, savings and loan associations, brokerage houses, and insurance companies. Almost 60 million Americans who are shareholders in IC's depend on the Commission to enforce the rules and regulations applicable to the operation of IC's and investment advisers. However, if a few large IC's were to experience significant incidents of fraud or abuse, investor confidence could be significantly eroded, resulting in a substantial impact on the economy.

The Investment Management program will regulate 3,550 investment companies with assets of approximately $1.4 trillion in 1992. By way of comparison, the Office of Thrift Supervision (OTS) has requested a total budget of $255.4 million for fiscal year 1992,[2] and a staffing level of 2,700 Full-Time Employees (FTE). OTS oversees a thrift industry with aggregate assets that are expected to aggregate slightly more than $1 million. Thus, with a proposed budget of $25.4 million for the Investment Management program and a staffing level of 320 FTC, the SEC will regulate an industry with even greater assets at a cost of only 10 percent, and 12 percent of staffing, of the OTS budget.[3]

The Commission will dramatically refocus the investment management inspection activity in 1992. In particular, the staff will inspect annually funds within the 100 largest fund complexes (which represent over 90 percent of industry assets). Smaller IC complexes and stand-alone funds will be inspected every 18 months. Further, the staff will establish a more frequent on-site presence at selected large IC's. The Commission intends to be increasingly vigilant in protecting the savings and investments of the public.

In total, this program is requesting 39 positions (12 percent) to begin accomplishing its new goals.

LEGAL SERVICES

The Legal Services program will be affected by expanded enforcement activity, global market issues, and implementation of the Remedies Act. For example, the staff will participate more in administrative proceedings and the drafting of Commission opinions for adjudication. Securities law violators will be more likely to litigate enforcement proceedings and appeal adverse decisions as a result of new civil monetary penalties and cease-and-desist authority provided to the Commission in the Remedies Act.

More administrative law judges will be needed to hear these cases, and to reduce backlogs in the number of Rule 2(e) proceedings instituted against lawyers and accountants. Administrative law judges will devote a greater portion of their time to the disposition of preliminary matters and to involvement in pre-hearing conferences. The staff will be heavily involved in researching legal and policy issues arising from transnational trading, the creation of market linkages, the development of cooperative agreements with foreign regulatory authorities, and requests for technical assistance from countries with developing securities markets.

The distribution of funds disgorged by securities laws violators, the prosecution of professionals under Commission Rule 2(e) and the Commission's appellate program will place additional demands on the staff to meet the increased enforcement activities under the Remedies Act. In total, this program is requesting an increase of 18 positions (12 percent).

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[2] Source: President's budget.

[3] Obviously there are many differences in the nature of regulations administered by OTS and the SEC. This comparison is not meant to suggest in any way that OTS does not utilize all resources extremely. Rather, it is simply meant to demonstrate the fact that, even at the proposed enhanced staffing levels, the Commission oversees enormous asset pools at very low cost in budgetary resources.

FULL DISCLOSURE

This program will be increasing its rulemaking and interpretative efforts with substantial emphasis on activities designed to accommodate cross-border and global offerings and trading. Critical issues will be addressed such as (1) the application of the statutory registration provisions, (2) treatment of U.S. holders of foreign securities when such securities are the subject of a tender offer, and (3) the differences in disclosure requirements in the various jurisdictions covered by multinational securities offerings.

Also, the program will be undertaking the transition from paper to electronic filing under the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. During 1992 the first 2,500 non-pilot registrants will enter the operational EDGAR system on a mandatory basis and begin filing all documents electronically. It is anticipated that these new filers plus 1,500 pilot filers will make over 7,500 test filings and approximately 25,000 actual filings during the year. Additional filer support staff will be needed to assure adequate response to filer calls, to provide assistance in the processing of filings, and to maintain congressionally-mandated paper backup copies of electronic filings.

In total, the program is requesting an increase of 38 positions (7 percent) for these activities.

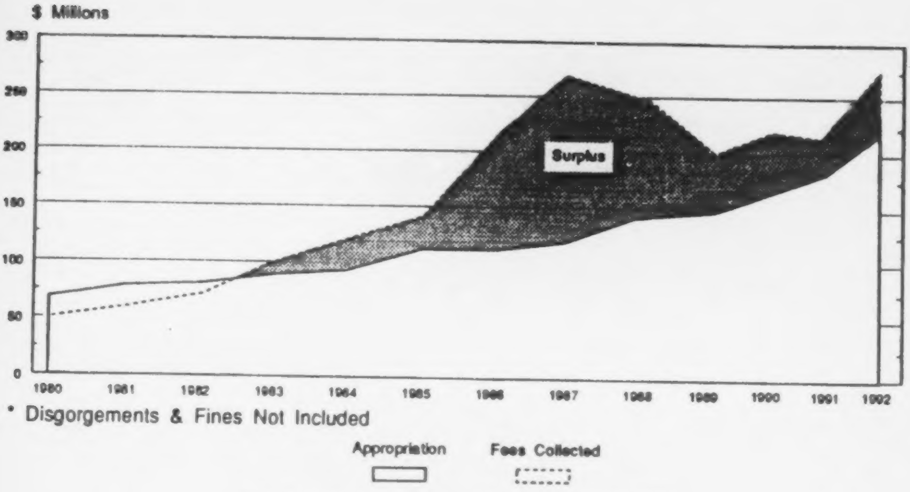
PROGRAM DIRECTION

Increases in resources for the Program Direction area have been kept to a minimum and are primarily targeted at providing the necessary support to the program divisions in developing the automated computer systems required by the Market Reform Act. Additional computer enhancements will facilitate the increased productivity and information utilization needs of the staff. Small increases in other resources will be used to improve the agency's debt collection and management information systems, procurement services, personnel recruitment, and to enhance the congressional liaison function.

In total, this program is requesting an increase of 17 positions (5 percent).

COLLECTION OF FEES AND DISGORGEMENT

The Commission's 1992 budget request should be considered in relation to the agency's production of revenues compared to its annual appropriation. In 1990, the Commission collected $232 million in fee revenue, 139 percent of its annual funding level, and the eighth consecutive year the Commission collected revenue for the U.S. Treasury in excess of its appropriation. An estimated fee collection of $231 million is expected in 1991, equivalent to 123 percent of the agency's funding. In 1992, fee collections are estimated at $277 million, equivalent to 123 percent of the agency's requested funding. The following chart shows that the total "surplus" collected since 1983 and anticipated through 1992 is $677 million.



Appropriated Funds vs Fees* Collected

* Disgorgements & Fines Not Included

Total Surplus Generated = $677 Million

In addition, courts have ordered significant levels of disgorgement of illegal trading profits and have instituted civil penalties as authorized by the Insider Trading Sanctions Act of 1984 and the Insider Trading Enforcement Act of 1988. Courts also order disgorgement in other types of cases where defendants profited from violating the securities laws. Between 1985 and 1990, court-ordered insider trading disgorgement totalled $145 million and non-insider trading disgorgement totalled $1.1 billion. Penalties during this period amounted to $109 million.

I am confident that the budget proposed by President Bush is justified by the substantial new responsibilities resulting from the enactment of the Market Reform and Remedies Acts, together with the tremendous growth in overall workload and associated risks to investors. Adoption of this budget would represent another crucial step in enabling the Commission to protect investors at a time when public confidence is essential for the securities markets and the U.S. economy.

I look forward to working closely with you as the 1992 budget is developed. I am pleased to answer any questions that you may have.

INCREASE SINCE 1986

Senator HOLLINGS. You have covered the increase that you have had, a measured increase since 1986. There is not that much in fraud. It is that much more activity by the Commission itself? Is that what you are saying?

Mr. BREEDEN. The market has grown enormously, the areas of our responsibility, whether it is equity trading, new types of products, or the size of mutual funds and their variety, so that the Commission's staffing has increased somewhat, and our budget has increased somewhat, but by vastly smaller percentages than the growth in the markets that we are overseeing.

FEES

Senator HOLLINGS. But I want to know because you have gone from $106 in 1986 to $226 you are requesting right now.

Let me ask about the fees themselves. You do not object to getting the money, do you?

Mr. BREEDEN. Well, we think that securities regulation should be paid for by the industry, by the fees that are assessed, and that when it costs more to regulate securities markets, it also should be recovered from fees. We would like to see the fees that are collected go for securities regulation and not for other programs.

Senator HOLLINGS. You ask in the supplemental to make the collections retroactive, is that right?

Mr. BREEDEN. In the supplemental request, what happened at the very end of the session last year was that a straight appropriation of $187 million got turned into $157 million plus up to 30 million dollars' worth of projected fee increases on the so-called 6(b) fee.

Because that was not actually implemented until the beginning of November, as I understand how the scoring process works, we lost any credit for the fees we collected during the month of October. The fees really were collected; they went into the Treasury. The $2.6 million in the supplemental would simply credit back to us the money we already collected during the month of October before the provisions enacted by the Congress kicked in.

Senator HOLLINGS. Senator?

Senator RUDMAN. Yes; I would just say that I will not go further on what the chairman has talked about here. I think we have an absolute agreement on these fees. Obviously, if we had to go along with having those back in the General Treasury, by my estimates, we would have to have an increase of 43 percent in your budget, and with the situation we are dealing with here in which we cannot even pay the electric bill—[laughter]—when we are so short of money that I do not think we probably would be able to do that, because it is not up to this subcommittee, as much as the chairman and myself would like to do that. If we get an allocation from the committee under our system now and under the new budget agreement of last year, we are just stuck with that and it will have disastrous consequences.

So although it might be very nice to say, "Well, we are going to do it this way; we will go in a very orderly way; we will put it in the Treasury, and then your subcommittee can do it," the fact is we probably couldn't. So it is a very important issue the chairman raises, and we had better really work on that. Because if that doesn't happen, you could face some rather disastrous consequences on this one. I just make that general observation.

Let me just ask a couple of questions. I am reasonably familiar with what you do, because I have been most interested in what the Commission has been doing over the last several years. Last year, we enacted a number of pieces of legislation. You mentioned two. We also did the International Securities Enforcement Cooperation Act of 1990 and clarified the authority of the Commission as to what it would do in terms of how it would educate and work with foreign nations, et cetera.

How is that working out? What do you think you have achieved there? Is it taking more resources of the Commission than really it should, or do you think it is about in focus? There has been some criticism that the Commission might—it is a little more fun to set up stock exchanges in Hungary than it might be to do an investigation in Passaic. Talk about that for a minute. I know that our colleagues across the way have been a bit critical, and I don't want to get into that kind of nit-picking, but we ought to talk about that a little bit here so we aren't accused of just ignoring the problem that is out there.

INTERNATIONAL ACTIVITIES

Mr. **Breeden**. I think it is an excellent question. I do not see any way that the Commission, putting aside the chairman individually, could achieve our objectives of protecting investors or promoting market stability, much less protect the ability of our securities industry, that is the No. 1 competitive securities industry in the world, to remain without having access to markets in Europe and Asia on which a lot of jobs and a lot of economic activity in the United States are related.

I do not think we could do any of those things if we were restricted to remaining in the United States and not applying a leadership role. Last year, I was the chairman of the executive committee of the International Organization of Securities Commissions. That is the international organization in which all my colleagues around the world participate, about 65 countries, in which the regulators get together to try and build a global structure.

The market itself has become a global market, and if we do not have cooperation among the regulators, a problem in Hong Kong will hit our market in about 16 hours. It won't take 16 weeks, it won't take 1 year. It will happen in a matter of hours. So the question of the capital levels, the enforcement practices, the clearance, and settlement systems in Japan or in Hong Kong or in Britain or France are very, very relevant to what we do.

Ten years ago we did not have any agreements with any countries, for example, to exchange enforcement data. In fact many countries had blocking statutes that provided that it was against the law for their agencies to share information with us or other agencies. Today, we have agreements with eight countries to share enforcement and investigation information, four of which have been signed during my tenure as chairman. One-third of our significant enforcement cases, last year, involved a foreign investigation, because it is very easy, even in Passaic, to pick up a phone, call a broker in London and route an insider trader transaction into the U.S. market, not directly, but through a foreign country. The phone call is pretty cheap. If you have inside information, you can make a couple of million dollars, if you are willing to pay the cost of the call to Paris or London.

If we do not have the ability to tailor our enforcement program with that of our colleagues in other countries, if we do not know each other, if we do not work together regularly, then we won't have an effective securities enforcement program in this country.

So I think we are doing what we should be doing, which is to build a strong global framework of cooperation. Most of our international activities are related very closely to other enforcement matters or market stability questions.

Senator **Rudman**. So if I understand your answer, I guess you would say that the amount of time that the Commission and staff is spending on that issue is appropriate, particularly since the Congress did pass a law called the International Securities Enforcement and Cooperation Act of 1990.

Do you think you are striking the proper balance as to the amount of time that the Commission and its staff are spending in that endeavor compared to your other endeavors, generally?

Mr. **BREEDEN**. I would say over the last few years the Commission has not paid enough attention to the international side of our business by a substantial margin.

I have increased significantly the time which some of our divisions spent working on that. There was a lot of activity. I do not want to suggest to you that we were ignoring it, but I do not believe that we were as active as we needed to be. I think we are getting to the right balance now.

FINANCIAL INSTITUTIONS TASK FORCE

Senator **RUDMAN**. Let me ask you another question on that issue. On the financial institutions task force that you set up, I can understand generally the reasons for it. Some have questioned it on the basis that you had most of these, if not all of these financial institutions, regulated by other Federal agencies: FDIC, Office of the Comptroller, and so forth. Give me the rationale for why it is necessary for the SEC to do that. I am not saying it is not, but I want to understand it on the record, if we could.

Mr. **BREEDEN**. First of all, the Congress has given us the job to do that. The securities offerings, the bank holding companies, and the savings and loans holding companies are under the responsibility of the SEC. By law, it is our job to oversee when those companies sell stock to the public all across this country. Those sales of securities, as they should be, are treated the same way as sales of securities by other companies.

Senator **RUDMAN**. Beyond that. We understand that.

Mr. **BREEDEN**. Well, there have been, in the last 5 years, about 1,200 bank failures in this country. More than 100,000 individual investors have lost over $12 billion in investments in those companies. It is very highly publicized. We have this too-big-to-fail doctrine that says, "All the insured depositors will be protected by the FDIC. Most of the uninsured will be protected", though I think we go a little far in that area. Many times, trade creditors are protected, but everybody so proudly says, "Well, but we don't bail out the stockholders." Stockholders in these institutions have gotten wiped out in massive numbers.

We are concerned about instances of outright fraud in which a bank that may be on the ropes financially, and is trying to stave off its bank regulator, will have the temptation to go peddle phony stocks to the public to try and raise funds to meet its capital problems.

The Bank of New England failure was a case in point, a very sad one, but that institution, in the third quarter of 1989, conducted a public offering and sold over 200 million dollars' worth of securities with financial statements and about a couple of weeks after the closing and they collected the money, they announced a $1.4 billion addition to reserves that dramatically changed the financial picture of the company.

Sadly, it turns out, that not only did they know about the $1.4 billion in reserves they needed to take when they made the offering and did not tell anybody about it, but they had been told in writing by the Comptroller's Office that they had to take these reserves before they did the offering and did not put it in the prospectus.

Senator RUDMAN. Are there criminal charges pending on that?

Mr. BREEDEN. We brought fraud changes against them.

Senator RUDMAN. If ever there was fraud, I thought that might be it. [Laughter.]

Mr. BREEDEN. So that is an example of the real world kinds of pressures that a failing institution is under, and as far as I am concerned, it is my job to protect investors in those institutions, and I am going to do it until somebody takes away the ability to do so.

PENDING LEGISLATION

Senator RUDMAN. Two more very quick questions and I will be done. Do you have any legislation that is working its way through your shop ready to come up here that you want to talk to your authorizing committees about that is going to create some additional expense and resource problems that we are going to have to deal with?

That is not to say you should not do that. I am just kind of interested in what we will be looking at in the next couple of years in terms of something you might be doing that could create some major new requirements for staff or whatever.

Senator HOLLINGS. Coming under the SEC, what about that? Do you think that is going to happen?

Mr. BREEDEN. Well, it should happen. I will leave it at that. Although that is an example of something, that because we are already the largest regulator in the securities and options area in the world, we have substantial existing capacity. We estimate that if we took over the regulation of stock index futures it would add about 18 people to our staffing of approximately 2,400 today. So that would be a tiny resource demand; it would actually save a lot of money for private industry in terms of having to deal with one regulator instead of two, and it would be a minimal expense for the Commission.

It would probably take less people than are here today to actually carry out the activity.

STOCK INDEX FUTURES JURISDICTION

Senator RUDMAN. I have been a strong advocate of that going way back to 1983 and 1984 and have essentially found that agricultural interests within this Congress were such as to make any of my efforts essentially nonefforts in terms of getting votes together to do that.

I just think that when you start getting the kind of instruments that they are now using, compared to the instruments that they were using traditionally, that this certainly is a matter for the SEC to look at. You have got the expertise and the people, but I must say that there is a terrific lobby up here that just absolutely makes that very difficult.

Some of them look like going to Las Vegas, some of those instruments in which they have got futures based on the Standard & Poor Index, for instance, or the New York Index. Those aren't hedges. Those are purely gambles. They can make an economic argument for them. I have heard it 100 times, but I believe you ought to have that jurisdiction, and I hope that the administration will really settle its dispute, if there is a dispute, and get behind it.

Mr. BREEDEN. Well, actually, the administration is behind it. The President has proposed this when he signed the Market Reform Act. The President at his signing statement called on Congress to pass the legislation that the administration sent up last year to transfer that authority to the SEC.

The opponents of that issue have tried to style it as a turf war between the SEC and the CFTC. They conveniently usually fail to note that it is the President's proposal and Secretary Brady has been probably the strongest exponent of it, and the Treasury does not have any turf at stake one way or the other. It is simply a recognition of the fact that a stock index futures contract has absolutely nothing to do with agriculture.

Senator RUDMAN. Nothing; zero.

Mr. BREEDEN. It is nothing but the trading of stocks in a block, and we regulate the trading of stocks and the trading of options, and we ought to regulate the trading of stocks in blocks like every other country in the world who trade stock in futures which does it with a single regulator.

VIOLATIONS OF REGULATIONS AND LAWS

Senator RUDMAN. We will take another run at it this year. A final question, and just a philosophical one, really, with all that has happened in the area of the discovery of fraudulent activity, outright larceny, insider trading and all of those other things that have happened since really, the mideighties, culminating with the failure of Drexel and all these things, and knowing that human greed is still a fairly strong human motive: what are your people finding out there?

Are people starting to behave themselves better, even if out of fear of going to jail or being discovered? Are you starting to find less of what appeared to be truly a prairie fire of incredibly unethical and unlawful and, in some cases, criminal conduct in an industry that had not been typified by that over its entire history. What are you finding out?

Mr. BREEDEN. That is an excellent question and one I think about quite frequently. I think it is fair to start out with the understanding that the unlawful conduct, violations not only of our regulations, but as you point out, of the criminal laws, though in some cases quite spectacular for its size and notoriety, only represents a pretty small percentage of the people in the securities industry.

The U.S. securities industry is the most competitive and most successful securities industry in the world. The holdings of securities in this country, 50 to 60 million people participating in our markets, is vastly greater than any other country has in terms of participation. The bulk of the liquid savings of this country accumulated in the last two centuries are in our securities markets.

So the men and women who work in that industry and try and serve their customers are by and large honest and hard working and follow the law. There were some people, particularly concentrated and active in the takeover business in the late 1980's, who decided they were above the law and that they could make an awesome amount of money, in large part by stepping around the laws and engaging in manipulations and insider trading.

I think because some of that activity was known by other market participants to exist, you know, it became pretty notorious and people saw vast amounts of money being made. Far too many people decided that, well, maybe those laws were just kind of old fashioned and they would do business a new way.

I think we have really smashed most of that way of thinking. I think among the major firms, the temptation to engage in insider trading is virtually gone. People know we have the ability and the will to find out about it, and we will pursue rather tenaciously people who engage in it. So we are not seeing a lot of new cases of that order of magnitude like we saw in the *Drexel* and *Milken* cases.

What we are seeing now is a huge volume of cases that emanate from foreign markets, takeovers where, particularly where the volume of investment in U.S. securities has been so high in recent years because of the level of the dollar and a lot of other factors, we have a huge number of cases where a foreign company knows of a pending takeover of a U.S. company or a bid for it, and regrettably, there have been some quite large cases of very prominent persons in foreign countries who take advantage of that inside information, do massive purchases of call options or something here in the U.S. market just before a transaction.

Senator RUDMAN. What do you do about that?

Mr. BREEDEN. We freeze the money. We try and get the money. In several cases, we have been successful in keeping the money before it leaves the country.

We also, as I say, that is where we bring into play the agreements we now have with the French and the British and the Japanese and the Swiss to break through secrecy laws and conduct investigations, and we have been very successful in prosecuting some of these foreign cases.

Senator RUDMAN. Let me just ask this, really winding up. That is very interesting. I think that you are quite right in what you say. The kind of the bloom is off the rose to some extent. So that won't be back for awhile or maybe for a very long while. But you mentioned the Bank of Boston situation.

Mr. BREEDEN. Bank of New England.

PROSECUTION OF ACCOUNTING FIRMS

Senator RUDMAN. Excuse me. I should say Bank of New England. I shouldn't say Bank of Boston. It is quite a different organization. What are you doing about some of the accounting firms? What is the SEC doing, or is that not something that you really get involved in?

There have been a number of allegations of some illegal conduct on the part of some of the firms. I am very familiar with one, because of my current life activities. I am glad Senator Hollings is here this morning. It is a wonderful respite from the Ethics Committee. What is happening with some of the accounting firms. What are you doing in that area? Is that within your jurisdiction?

Mr. BREEDEN. It is, or at least part of it is in our jurisdiction. We do oversee not only accounting principles and the development of acceptable accounting principles, and we have been trying to foster approved accounting for, particularly, problem banks, problem firms, but also the professional practices of the accounting firms, and we have brought a number of what are known as 2(e) proceedings, which are disciplinary proceedings against accounting firms.

They tend to be very long and very expensive proceedings. We have had some in progress for the last 10 years. The major firms are perfectly willing to hire a lot of law firms and litigate with us to drag out or to avoid a sanction from the SEC against them because of all the private plaintiffs who are suing them, and there are quite a few of them these days, at least that is evidenced from our cases.

Senator RUDMAN. Do you handle that with your own staff at the initial point?

Mr. BREEDEN. Yes.

Senator RUDMAN. Or do you have to turn that over to Justice in terms of these proceedings?

Mr. BREEDEN. It is not a criminal proceeding.

Senator RUDMAN. It is a civil proceeding.

Mr. BREEDEN. It is an administrative proceeding, a civil proceeding by the Commission. We do have, and I wouldn't want to talk about the details, but we do have several what I would characterize as major investigations underway in the accounting area and relating to practices in connection with institutions, in some cases, that have failed, despite having unqualified opinions.

Senator RUDMAN. Thank you very much. I had about three or four questions that were more general, having to do with your budget and your appropriation, which I believe the chairman covered very well in the first 2 or 3 minutes, as he usually does.

INTERNATIONAL MARKETS

Senator HOLLINGS. Yes; we will submit some other questions, Chairman Breeden, but let me ask about just one that was touched on. These fast operators, I am looking at the European and Japanese markets growing faster than ours. Is that generally the economic condition of the country? Or are all my fast operators now running over to the European and Japanese markets or both?

Mr. BREEDEN. Well, the markets themselves are not necessarily growing faster than ours. In fact, if you look at the last year, Japan's market fell about 40 percent in value, where ours had a dip of 5 or 6 percent. So in the last 12 months or so, we are doing quite well vis-a-vis the Japanese securities market.

It has, of course, grown during the eighties by a much larger factor than our own. Our market remains the largest market in the world. Both the Japanese and European markets are now roughly on a par with us in terms of size, which is a dramatic change from 1980, when we were four times larger than the next largest market.

Senator HOLLINGS. That is what I had in mind.

Mr. **BREEDEN**. So there has been a very great increase in market that reflects a number of factors, including, in the case of Europe, that a lot of companies were State owned and have been privatized, so they have gone back to private ownership, and there is a change in the size of the securities market, not necessarily a change in the size of GNP.

What we have seen in the enforcement area is that the crooks have become very ecumenical. They have discovered that it is convenient to travel, it is easy to communicate, and that the tougher the enforcement gets in this country, and as securities markets grow in other countries, that they can play some of the same scams that go on here in countries all over the world and sometimes they can live in those countries and do the scam here.

We have a lot of penny stock fraud, for example, where we have people living in Canada or in Mexico, calling into the United States, getting the money sucked out of the United States but trying to stand behind international borders to shield themselves from prosecution. We have some of the same kind of activity going on from Europe to the United States and, regrettably, sometimes from here to Europe.

So it has now become very much of a multinational effort to keep the pressure on. Part of it reflects the fact that we are being successful here. We do put the pressure on people here who try and cheat the investors, and so now there is a search to find havens, to find jurisdictions where they can operate behind a shield. That is why I come back to Senator Rudman's earlier question, why we are working very, very actively. Right now, I am the president of the Technical Committee of the IOSCO, which is the standard-setting body of all the regulators in the world, to try and build our defenses against fraud on a global, cooperative basis, and I must say that to the great credit of our colleagues around the world, there is a very rapid increase in their sensitivity to these problems, as well, and the global effort now is a very active one.

ADDITIONAL COMMITTEE QUESTIONS

Senator **HOLLINGS**. The questions referred to earlier will be submitted for your responses in the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Fees and Affording the Budget

QUESTION:

On a net federal basis, the Securities and Exchange Commission raises fees that pay for itself. Unfortunately, these fees are deposited in the Treasury and do not get credited as an offset to appropriations. Unless fees are credited to the appropriation as "offsetting collections", the $68.3 million or 43% increase above FY 1991 appropriations for the SEC will be scored against this Committee's Budget Authority and outlay allocation. That leaves us with the choice of saying no to your increase or cutting another agency to pay for it.

Last year, this Committee was able to provide the SEC with budget increases because we enacted bill language that credited new fee increases as offsetting collections. That is, SEC got the fees instead of the Treasury. However, the SEC's 1992 budget proposes to negate our efforts and provide these collections again to the Treasury!

Chairman Breeden, why did the SEC decide to take this action and reverse the Committee's fee initiative?

ANSWER:

The change in fees was proposed by the Office of Management and Budget (OMB). The language was intended to mirror that of 1990 which enabled the Committee to score the fee increase in Section 6(b) registration fees as offsetting receipts. The OMB explanation was that the 1992 language would be scored in the same manner, that is, the SEC's base appropriation of $157.5 million would be scored against budget authority and outlay ceilings. The Commission wishes to work with the Committee to achieve this common goal.

QUESTION:

Would you oppose restoration of the bill language enacted by the Congress last year if it enables us to grant your program increases?

ANSWER:

No, we would not oppose any formula that allowed the fees collected by the SEC for any and all securities activities to be devoted to funding the operations of the agency. While we believe that the proposed budget language is intended to allow this result as to new fees, we would not oppose modifications necessary to achieve the end result as part of the budget scoring process.

EDGAR Project

QUESTION:

Please provide a status report on the EDGAR automation project.

ANSWER:

The SEC and contractor staffs are currently testing the first release of the EDGAR software. It now is expected that the new EDGAR system will be opened for test filings by the EDGAR pilot filers during late April 1991. The SEC plans to invite pilot filers to make live filings on the second release of the EDGAR system in late October 1991. The second release of the system will include a number of important additions and enhancements including a critical link with the fee accounting system on the SEC's mainframe computer.

We expect the pilot filers and approximately 800 new electronic filers to begin mandated filing on the new system in May 1992. An additional 1,700 filers will be phased in by November 1992 when the Congressionally-mandated six month test period will begin. Following this test period, the Commission is expected to certify the EDGAR system as operational and authorize the phase-in of all 15,000 registrants between mid-1993 and mid-1995.

The Commission plans to publish the proposed EDGAR rules and phase-in schedule for all registrants during late April 1991. The Commission also expects to modify the existing EDGAR pilot rules to accommodate voluntary filing by the pilot participants on the new EDGAR system between November 1991 and May 1992. After analyzing the comments received on the EDGAR rule proposals and assessing the pilot filers' experience with the new EDGAR system, the Commission plans to adopt the EDGAR rules by December 1991.

QUESTION:

What was the basis of GAO's advice to SEC that it not recover costs as is done in the Patent and Trademark Office and many other federal programs? Given the current budget environment versus that which existed when GAO made its recommendations, does the SEC still believe that EDGAR costs should not be charged to users?

ANSWER:

Given the critical importance of balancing the federal budget, the SEC does not believe it inappropriate to charge users of a system such as EDGAR a fee based on the full costs of developing and operating the EDGAR system.

The arguments advanced by the General Accounting Office (GAO) to require taxpayer financing of the bulk of EDGAR may not reflect national budgetary goals. Although we suggest that the Committee address its question to the GAO for the most accurate response, we understand that GAO made the following arguments in its report entitled ADP Acquisition: SEC Needs to Resolve Key Issues Before Proceeding With Its EDGAR System: 1/

1) Current law and federal policy state that fees assessed requesters of publicly available information must be based only on the actual cost of providing the information and that costs for creating, collecting (receiving), processing, and transmitting data may not be recovered by such a fee.

2) Under the Freedom of Information Act and the User Charge Law an agency can charge no more than the cost of providing a copy of the information.

3) These provisions deny the Commission the authorization to include costs of the internal EDGAR system in the cost base used to compute fees charged the public for information from the Commission.

The GAO report also stated that the Commission's proposal to recover internal processing costs through fees charged the public to some degree would bypass the authorization and appropriation process. These comments address the issue of charging users of EDGAR data for what the GAO considered federal functions. However, they do not appear to preclude charging filers for use of the EDGAR system.

While the SEC would not oppose a more equitable charge for users of EDGAR, we do not believe that it would be appropriate to levy a special charge on EDGAR filers until the system is fully operational and most filers are phased in on EDGAR. Filers who are mandated to file will

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1/ Report to the Chairman, Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, (GAO/IMTEC-87-2) October 9, 1986.

incur some initial costs in any case. Requiring them to pay a surcharge or equivalent when they first file on EDGAR is likely to increase their resistance to electronic filing before the SEC has an opportunity to demonstrate its value.

QUESTION:

Once electronic filing is operational, how will documents be made available to the public? At how many locations will the documents be available besides SEC headquarters? What are the estimated per page or per document retrieval costs?

ANSWER:

Pilot EDGAR filings are available to the public in electronic format, on paper and on microfiche. With the advent of the operational system, the extent and speed of dissemination of electronic filings will be expanded considerably through the availability of real-time subscription services accessible from houses and offices nationwide and unrestricted resale rights.

Direct Availability from the SEC

It is anticipated that public filings will be available initially in electronic format at the SEC Public Reference Rooms in Washington, New York, and Chicago. Ultimately, the SEC plans to make electronic filings available via Public Terminal Rooms at its nine regional and four branch offices. EDGAR terminals will be installed for free use by the public to search the EDGAR database for specific filings or groups of filings by fixed field and text-based queries. Paper printouts of electronic filings requested by public users in the Washington, New York and Chicago Public Reference Rooms will be provided by Disclosure, Inc. (Disclosure), the paper and microfiche subcontractor under the EDGAR contract. Disclosure has agreed to provide such services at regulated rates within the SEC's Public Reference Rooms.

Disclosure will continue to provide microfiche copies of public filings at regulated prices for the foreseeable future. By 1995, it is possible that the SEC may change from a microfiche based system to an optical storage system such as CD-ROM.

The SEC also will continue to provide a few free EDGAR terminals in the Washington Press Room for use by financial media representatives.

Availability from the Dissemination Subcontractor

Mead Data Central (Mead) is the EDGAR subcontractor responsible for the design and development of the electronic dissemination subsystem. Under its subcontract, Mead is required to sell the following services at regulated prices:

- Level I Standard. For an annual subscription fee, this service will provide copies of all public filings received by EDGAR. The subscriber will be provided a personal computer, printer, and software by Mead to access the dissemination subsystem, query a small current database containing public filings from the last three business days, and request a download of any filing desired. The subscriber also will be provided a daily magnetic tape containing all public filings filed on EDGAR as of the end of the previous business day.

- Level I Broadcast. For an annual subscription fee, this service will provide the subscriber with electronic copies of all public filings filed on EDGAR. The subscriber's computer will be connected directly to Mead computer facilities in Arlington, Virginia, which will transmit copies of filings on a real-time basis as they are accepted by the SEC and further sequenced by form-type priority. The subscriber may also get an optional magnetic tape copy of all filings for an additional charge.

- Level II. Subscribers for this service may, for an annual fee, receive any one or more of eight predefined subsets of all public filings filed electronically with the SEC. For each subset, the subscriber will receive a daily magnetic tape containing all of the electronic filing types defined for that subset that were accepted as of the end of the previous business day. The following eight subsets will be available to the extent that the associated filings are required to be filed electronically:

1) periodic filings by companies on the New York Stock Exchange: Forms 10-K, 10-Q, 8-K, 10, ARS, Proxy;
2) periodic filings by companies traded on the American Stock Exchange;
3) periodic filings by companies traded over-the-counter;
4) filings made pursuant to the Williams Act (Schedules 13D, 14D-1, 14D-9, 13G, 13-E1, 13-E3, 13-E4);

5) annual and quarterly reports of all companies pursuant to the Securities Exchange Act of 1934 (Forms 10-K, 10-Q);
6) registration statements pursuant to the Securities Act of 1933;
7) stock ownership reports (Forms 3, 4, 144, 13F, Schedules 13D, 13G, 14D-1); and
8) periodic reports filed under the Investment Company Act of 1940.

The primary subscribers to the Level I and Level II services are expected to be large data users such as financial news services, mutual funds, investment banks, and rating services. Since the data acquired via the dissemination subsystem is not copyrighted, it is expected that some of these large subscribers will resell the data to smaller users (including individuals) who have specialized or low volume needs. It also is expected that the data will be sold in both raw and value-added forms.

In addition to operating the dissemination subsystem under the auspices of the SEC, Mead also will be a Level I subscriber and is expected to sell unregulated products and services from the EDGAR database that it will maintain for the SEC. For example, Mead may sell subscriptions to permit individuals to access public SEC filings similar to the subscriptions it currently sells for its LEXIS and NEXIS services.

Disclosure is expected to purchase a Level I subscription from Mead and compete with Mead in selling unregulated products and services to the public.

Number of locations and charge for documents

The SEC believes that by 1) mandating minimum dissemination requirements at regulated prices via the services described above and 2) requiring that purchasers within each Level receive the data in the same format virtually at the same time, public filings will be available on equal terms to all persons as required by the Securities and Exchange Commission Authorization Act of 1987. The resulting direct and open competition among potential resellers in the unregulated market should ensure reasonable prices to the public.

Subscription prices are expected to vary according to the features and Level that the subscriber chooses. Costs to be charged by resellers to individual users cannot be determined at this time. In any case, the charge per page or per document under such subscription arrangements will depend on how many documents are received and used.

The charges for copies of filings at the SEC's Public Reference Rooms are expected to be in the range of current charges by Disclosure for paper copies. The charge for printing a copy of an electronic filing is $.22 per page. Paper copies of filings (electronic or paper) reproduced from microfiche range from $.20 to $.35 depending on how quickly the copy is needed and whether it is self-service. Microfiche charges range from $2.50 to $5.00 per microfiche card depending on the same variables. Volume discounts are available for persons who subscribe for large volumes of microfiche.

Investment Management

QUESTION:

When will the Investment Company Act study be completed and issued? What recommendations are anticipated from the study?

ANSWER:

Last year I directed the Division of Investment Management to undertake a thorough and comprehensive study of the Investment Company Act. The purpose of the study was to consider whether changes should be made to this very important statute that governs the use of more than $1 trillion invested in mutual funds in light of market changes during the 50 years since the law was passed. In creating this study, I did not give the Division a specific deadline, or dictate what recommendations should be considered. Rather, the study is a wide-ranging and thorough consideration of every aspect of the legislation. I hope that the study will be completed and result in the publication of any recommendation for legislation sometime this spring or early summer.

QUESTION:

A refocusing of the inspection program is planned for 1991 and 1992. Why was this done? Was it in response to GAO's report last year? What are the frequency of inspections and the goals of the investment company and investment adviser programs?

ANSWER:

The focus of the inspection program was not changed in response to GAO's report, which was not useful or accurate. Rather, this step was taken by the Commission in order to monitor more closely the operations of those investment companies and advisers whose activities play a major role in U.S. capital markets. Ninety percent of mutual fund assets are held by funds in the 100 largest fund complexes while the top 265 investment advisers manage 53% of all non-investment company assets under management. If a fund in one of these complexes or a large adviser caused investors to lose substantial amounts of money through fraud or deceit, the resulting loss of confidence by investors could have serious consequences for U.S. capital markets. To reduce the possibility of such a significant loss, the focus of the inspection program has been redirected to permit annual inspections of funds in the 100 largest fund complexes and all money market funds. Investment advisers with assets under management of over $1 billion will be inspected every three years.

The focus on large entities means that some smaller investment companies and most small advisers will be inspected less frequently. However, small investment companies would be targeted for inspection at least every two to two and one-half years. The staff will continue to conduct cause examinations of small advisers where misconduct or problems are suspected. To the degree adequate inspection resources were available, we would inspect smaller entities somewhat more frequently than currently anticipated. However, at current resource levels we believe it is important to target our resources on the firms holding most of the public's funds.

QUESTION:

What progress has been made in reducing the backlog in public utility filings?

ANSWER:

At the end of FY 1990 the backlog of complex filings was 12. These filings require more staff time for review due to the intricate financing and acquisition arrangements proposed and legal issues presented. The additional staffing received during the year has enabled the Commission to reduce the number of complex filings to 7 as of March 1, 1991. We anticipate that this number will be further reduced to 4 by September 30, 1991. Given the nature of such filings, there will always be a backlog of complex filings before the Commission.

Many factors, primarily requests for hearings and the need for state authorizations, over which the Commission has little or no control, affect the swiftness of the review and the issuance of an order. As the complexity and novelty of the filings increase, so does the likelihood of hearing requests. Even if a request for hearing has no merit and is subsequently denied, several weeks are added to the processing time of the filing.

If the hearing request is granted, the resolution of the filing may take months or even years.

QUESTION:

Do any states review investment company registrations?

ANSWER:

Yes. Of the 48 states that require open-end investment companies to register 2/, four consistently comment on particular aspects of the filing. 3/ We understand that seven other states comment occasionally on open-end investment company registration statements. 4/ Thus, the state registration procedures for mutual funds are largely revenue programs that are not closely related to the review of filings or antifraud efforts relating to mutual funds. The Commission, which rigorously reviews investment company filings, received approximately $40 million in fees from investment companies in 1989. In the same year industry sources stated that investment companies paid more than $65 million in state registration fees. This system of registration of mutual fund prospectuses in 48 jurisdictions has added substantial costs that ultimately reduce returns to investors. In addition, the state registration system may impede efforts to remove barriers to the international flow of capital and to harmonize regulations internationally.

Fraud Suppression and New Legislation

QUESTION:

From your opening statement, it is apparent my colleagues on the Banking Committee are doing a lot of authorizing regarding your agency. They've put forward and the Congress has agreed to: 1) the Market Reform Act of 1990; 2) the Securities Act Amendments of 1990; 3) the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, and 4) the International Securities Enforcement Act of 1990.

2/ Hawaii, Wyoming, and the District of Columbia do not require investment companies to register. Investment Company Institute, Blue Sky Guide (1990).

3/ Arizona, California, Texas, and Wisconsin perform this type of review.

4/ These states are Arkansas, Indiana, Iowa, Missouri, Ohio, South Dakota, and Tennessee.

What impact will these Acts have in making the markets safer and free from fraud?

ANSWER:

The statutes passed by Congress in 1990 should improve substantially the Commission's ability to police fraud in the markets and to protect the markets in other ways.

The Market Reform Act of 1990 gives the Commission significant new powers to obtain information regarding situations that may threaten the capital of U.S. broker-dealers and to identify the major participants in the U.S. securities markets. These powers should enable the Commission to oversee better the condition of registered broker-dealers, monitor trading practices in the securities markets, and reduce the risk of disruptions in the markets. The Act gives the Commission greater authority to act in market emergencies, to reduce systemic risks from the clearance and settlement process, and to monitor risks to securities firms from the operational and financial condition of their affiliates.

The Securities Act Amendments of 1990 add all felonies as grounds for disqualifying individuals from the securities industry. This amendment will allow the self-regulatory organizations and the Commission to exclude persons with a criminal background from the securities industry if necessary to protect investors.

The Securities Enforcement Remedies and Penny Stock Reform Act of 1990 gives the Commission several new weapons to combat securities law violations generally and penny stock fraud in particular. These weapons include authority for the Commission to issue cease-and-desist orders for virtually any kind of securities law violation, authority for the federal courts and the Commission to impose civil money penalties for securities law violations, and authority to bar persons engaged in penny stock fraud from participating in future distributions of penny stocks. This authority, combined with the customer disclosure rules mandated by the Act, should significantly improve investor protection in the penny stock market.

The International Securities Enforcement Cooperation Act, passed as part of the Securities Acts Amendments of 1990, should help the Commission to police the securities markets by improving its ability to obtain assistance from foreign securities regulators. It includes as grounds for refusing or revoking the registration of a broker-dealer, and as grounds for disqualifying individuals from the securities industry, violations of foreign laws and securities industry rules. These amendments will help prevent firms and individuals with a foreign disciplinary history from effecting securities transactions with U.S. customers.

QUESTION:

The Commission has created a special task force in the Enforcement Division to concentrate on securities violations by banks and savings and loans. What progress has this task force made?

ANSWER:

A financial institutions unit was formed within the Division of Enforcement as part of a major initiative by the Commission to investigate and prosecute violations of the federal securities laws by financial institutions and associated persons. The unit is actively involved in conducting investigations, as well as coordinating and assisting in all Commission investigations involving financial institutions, and acting as liaison to the federal financial regulators and law enforcement authorities. The Commission has initiated a large number of investigations involving financial institutions, their management, and associated professionals such as attorneys, accountants and underwriters. These investigations cover a broad scope of potential securities law violations, including financial statement fraud (particularly the untimely or inadequate recognition of loan losses, and improper recognition of revenues), disclosure violations, fraud in the offering and sale of securities (including equity, debt and commercial paper), insider trading, and various management integrity issues, including misuse of financial institution funds and the nondisclosure of loans and other related party transactions by officers and directors.

Since the beginning of 1990, the Commission has filed eight cases in this area, including a major civil fraud action investigated by the financial institutions unit and filed against the Bank of New England Corporation (BNEC). The action alleged that a material amount of BNEC's $1.61 billion provision for loan and lease losses for the fourth quarter of 1989 should have been recorded in prior periods and that in September 1989 BNEC conducted a public offering of securities based on knowingly false financial disclosures. Total investor losses associated with the failure of BNEC during its final two years amounted to as much as $2 billion. This case demonstrates the Commission's continuing efforts to detect and prosecute this type of knowing violation of the securities laws that can harm thousands of investors.

In addition, an investigation by the financial institutions unit led to a recent civil injunctive action against People's Bank of Brevard, Inc. for violations of certain registration provisions in connection with the initial public offering of its stock. Other significant Commission actions against financial institutions include: SEC v. Security National Bancorp, Inc., alleging fraud relating to the alteration of an auditor's report and the nondisclosure of information relating to its failure to comply with regulatory capital requirements; SEC v. Parigian, alleging fraud in relation to untimely and inadequate recognition of loss reserves that resulted in the material overstatement of the income of Capital Bancorporation; SEC v. Yamazaki, alleging fraud as the result of trading by a bank employee while in possession of material, nonpublic information gained during the course of his employment; SEC v. Chapnick, alleging fraud relating to the false and misleading financial statements of Commonwealth Savings and Loan Association; SEC v. Wellesley Mortgage Corp., alleging fraud and the violation of certain registration provisions relating to the creation of an unregulated lending institution; and SEC v. Latin Investment Corp., alleging fraud and the violation of certain registration provisions relating to the sale of unregistered securities in the form of pass book accounts.

QUESTION:

In one of this Subcommittee's other areas of law enforcement, the Justice Department has been finding that drug smugglers are getting smarter and doing a better job of shielding their financial assets from seizure. A year ago we discussed the Commission's success in the Drexel-Burnham-Lambert Group and the Boesky cases.

Are you finding similar behavior by the "bad guys" that you have to deal with? Is it getting harder to discover insider trading and other fraudulent acts?

ANSWER:

As you know, it is virtually impossible to measure the amount of fraud that goes undetected. For example, the number of insider trading referrals from the self-regulatory organizations has declined during the past year (FY 1989--253; FY 1990--176; a 30.4% decline), but that may be due in large part to the decrease in the number of takeovers. However, I am confident that our successful efforts in this area have, in fact, significantly altered the would-be insider trader's risk/reward analysis. We have demonstrated that we are able to detect and prosecute insider trading by corporate insiders, lawyers, financial advisors and, most notably, market professionals.

While it may not necessarily be more difficult to detect securities fraud generally, the increasing international character of the trading markets can present new types of detection problems and problems related to obtaining disgorgement from violators. Potential violators have become more conscious of Commission scrutiny, and sometimes adopt measures that make it more difficult to identify them and to prove that they have in fact, violated the securities laws. The complexity of trying to trace assets and prove violations will only increase as internationalization of the securities markets continues.

The problems related to collecting evidence of securities laws violations having a foreign component are not limited to insider trading. It can be difficult to prove some types of financial fraud by foreign corporations whose stocks are traded on U.S. markets. The Commission often has no jurisdiction to compel production of the outside auditor's working papers of the audit, often the best road map to problems in the company's financial statements.

The Commission has nevertheless continued to have success in surmounting these obstacles. The Commission continues to encourage international enforcement cooperation. It has taken a leadership role in negotiating agreements for mutual information-sharing and assistance with foreign governments. The Commission has had success obtaining foreign workpapers and other documents through both formal and informal mutual assistance agreements. In addition, where necessary, the Commission has moved quickly for temporary restraining orders or asset freezes in cases involving illegal international trading. The Fondation Hai and Contel cases are examples. If the Commission can freeze the funds, either in a U.S. court or through the processes pursuant to a Memorandum of Understanding, it becomes easier to investigate and prosecute the matter.

In this regard, the ability of the Commission to establish working relationships with foreign securities authorities, including those in developing markets, and to negotiate cooperative arrangements in Memoranda of Understanding, should contribute significantly to the Commission's ability to detect and pursue fraudulent market practices.

Beyond these practical issues, the process of detecting and prosecuting violations of the federal securities laws is becoming as complex as the markets. The increase of new securities products, mortgage backed securities, index options, and products that split principal and interest payments can make investigating potential violations in this market more difficult. To meet these new challenges, the Commission has moved in the direction of creating specialized units to deal with the more complicated enforcement issues. The Penny Stock Task Force and the Financial Fraud Unit are the best examples of this trend. We also are seeking to work even more closely in joint investigations with the Federal Bureau of Investigation and U.S. Attorneys' offices across the country.

SEC Involvement in Eastern European Development

QUESTION:

Mr. Breeden, I understand that the SEC has been assisting Hungary, Poland and Czechoslovakia with creating securities markets.

Could you please summarize the Commission's efforts in this area?

ANSWER:

To facilitate the removal of impediments to capital formation and promote investor protection internationally, the Commission renders technical assistance to countries around the world that are restructuring their financial sectors. In the past year, the Commission has provided significant assistance to the newly emerging capital markets of Eastern Europe. These efforts are part of the much broader effort by the United States to foster free enterprise in those countries and the Commission's own efforts to respond to globalization of securities markets and the enormous challenge presented by that process.

The Commission has responded to requests for technical assistance from emerging markets such as Hungary and Poland in three ways: (1) formation of the Emerging Markets Advisory Committee (EMAC), consisting of private sector securities market experts available to advise the Commission on providing technical assistance to countries with developing securities markets and to assist the Commission in providing such assistance; (2) creation of the International Institute for Securities Market Development, which will conduct an annual training session here at the SEC for regulators in countries with developing markets; and (3) provision of technical assistance on a country-by-country basis.

These initiatives have yielded concrete efforts in the case of Eastern European countries. For example, the Commission and Hungary have entered into an understanding regarding technical assistance. Pursuant to this understanding, the Commission has provided assistance in the training of personnel relating to the development of securities markets and specific techniques relating to privatizations and offerings of different types of securities. EMAC members and the Commission have already provided advice and assistance to Hungary on a number of securities-related matters, including the drafting of Hungary's securities and corporate laws, the design of its clearance and settlement system, the formulation of regulatory procedures, and the implementation of specific provisions of its securities laws.

The staff of the Commission has corresponded and had discussions with officials from Poland regarding the drafting and implementation of their securities laws and regulations. The Commission also has provided advice to other Eastern and Central European countries, including Bulgaria and Yugoslavia, as part of missions sponsored and led by either the Treasury Department or the Commerce Department.

In April and May 1991, the Commission will hold the first International Institute for Securities Market Development (Institute), a two-week training session for developing market officials. Approximately 70 officials from 32 countries will attend the Institute, which we have organized in conjunction with the World Bank, USAID and other agencies. The countries that will send representatives to the Institute are:

> Bangladesh, Barbados, Chile, China, Costa Rica, Czechoslovakia, Egypt, El Salvador, Greece, Honduras, Hungary, India, Indonesia, Jamaica, Kenya, Malaysia, Mexico, Morocco, Nigeria, Pakistan, Panama, Peru, Philippines, Poland, Saudi Arabia, Sri Lanka, Thailand, Trinidad and Tobago, Tunisia, Turkey, USSR and Yugoslavia.

In addition to the Institute and the Commission's technical assistance to countries of Eastern Europe, the Commission is also actively assisting other developing markets. For example, in October 1990 the Commission entered into a Memorandum of Understanding with the Comision Nacional de Valores (CNV), which included an agreement for technical assistance in addition to the usual enforcement, co-operation and information-sharing provisions. The staff of the Commission, in conjunction with representatives of the New York Stock Exchange, has met with representatives of the CNV on numerous occasions regarding a broad range of topics, including self-regulatory organizations, margin credits, specialist systems, regulation of investment advisers and investment companies, and regulation of short selling.

QUESTION:

What is your prognosis? Will these countries be able to establish or I should say "reestablish" viable stock markets?

ANSWER:

It is difficult to predict the success or well-being of nascent securities markets anywhere, let alone in countries that for a considerable period of time have not had the infrastructure or economic systems necessary to support securities markets. Nonetheless, each of the three countries about which you have asked has begun, and is continuing, the process of establishing securities markets. Hungary, for example, has already reopened the Budapest Stock Exchange, and very limited trading in equity securities has commenced on the Exchange. Poland's privatization efforts are progressing, and the country is nearing enactment of comprehensive securities laws and restoration of securities markets. Czechoslovakia, as well, has begun the process of privatization and continues to move toward a market economy with freely traded securities. Thus, although the success of these countries in establishing securities markets cannot be accurately predicted, their desire to establish such markets appears strong. The Commission has been, and remains, committed to helping establish those markets by providing technical assistance, subject to budgetary constraints.

In many cases, the Commission does not bear the cost for our assistance. For example, EMAC members are responsible to pay for their own costs. In some cases, as with Greece, the host government that requests the assistance pays all of the Commission's expenses. In addition, the Asian Development Bank, the World Bank and other agencies have requested the Commission to assist various countries with securities matters and have agreed to reimburse the Commission for its costs incurred in connection with rendering such assistance.

SEC International Issues

QUESTION:

Mr. Breeden, you have a reputation as an SEC Chairman who is quite interested in international issues. As I understand it, the U.S. securities markets are the largest in the world. Unlike banking, about half the world's largest security firms are American. However, the bad news is that the Japanese and European markets are growing much faster than ours.

How competitive are American security markets internationally? Why are the Japanese and Europeans growing faster?

ANSWER:

American securities markets continue to maintain their competitive edge over other international securities markets. Both organized markets (stock and options exchanges, the over-the-counter market, and U.S. clearing agencies) and broker-dealers are among the most innovative, best-regulated, and most liquid participants in the world's securities markets. For example, the continual stream of new products that permit American and other investors to trade on American markets in securities products based on indices of foreign markets is indicative of the ingenuity and strength of the American markets.

The two leading securities markets, as measured in terms of market capitalization of listed securities, are the New York and Tokyo Stock Exchanges, each with capitalizations of approximately $3 trillion. Although it is true that the Japanese market grew in capitalization at a faster rate than the U.S. markets in the 1980s, a major factor in this growth rate was the fluctuation of currency exchange rates and the underlying economic factors. There is no evidence that this growth was related to any competitive edge the Japanese securities markets may have over U.S. securities markets. Moreover, this trend in capitalization growth rates has reversed itself recently. In 1990, the Nikkei Index fell by 47.8%, compared with 21.2% for the Dow Jones Industrial Average.

With respect to the European markets, the prospective 1992 integration of European markets, including financial services, is designed to maximize market liquidity and to remove unnecessary costs. This development makes it ever more important to improve the liquidity of U.S. markets by preventing fragmentation and unnecessary regulatory barriers, particularly at the state and local levels. Though significant challenges will confront U.S. firms and markets in the 1990s, the U.S. securities industry and U.S. markets are extremely competitive internationally. The Commission is trying to make sure that international or domestic developments do not impair this competitiveness of U.S. markets.

QUESTION:

What impact does the huge U.S. budget deficit have on the U.S. equity markets vis-a-vis foreign markets? On that score, how does Wall Street evaluate the 1990 budget agreement?

ANSWER:

In general, large budget deficits could consume domestic savings that might otherwise be invested in equity securities rather than in government securities. To the extent that U.S. savings are utilized for such purposes to a greater degree than occurs in foreign markets, the impact could be adverse. However, relative differences in interest rates between countries may have an even greater overall influence on markets. Thus, economists differ widely on the net effect, if any, of the budget deficit on U.S. equity markets vis-a-vis foreign markets. Personally, I believe that serious efforts to reduce federal spending and a lower federal deficit would have a positive overall impact on U.S. equity markets.

It is very difficult to say how Wall Street rates last year's budget accord. Nevertheless, the market indexes for both the stock and the bond markets are considerably higher now than they were in the fall of 1990 and the indexes for both markets increased around the time of the budget accord's adoption. This increase suggests that Wall Street viewed the budget accord as a positive development.

QUESTION:

What structural or other changes would you recommend to keep our stock markets ahead of foreign markets?

ANSWER:

Our markets are among the most innovative and most liquid markets in the world. Their structure allows competition, diversity, and innovation. At the same time, our system places a premium on fairness and honesty, essential conditions to maintaining investor confidence. In particular, the transparency of our equity markets provides all investors with accurate trading information, affords protection to those investors, and promotes fairer markets than many foreign stock markets. Because our securities markets currently work well, radical structural changes do not seem to be necessary.

The capital-raising ability of our markets has been harmed, however, by the anti-competitive effects of various statutes, some of which are more than 50 years old, that fragment our financial markets. For example, the Glass-Steagall Act and the Bank Holding Company Act restrict the ability of financial institutions to diversify and to raise capital cheaply and efficiently. These obstacles are created by an outmoded regulatory system, which has failed to keep pace with the rapid innovations in the financial services industry, and have added unnecessary costs and increased risk to the financial system.

Perhaps the best example of such arcane, anti-competitive restrictions is the exclusivity clause of the Commodity Exchange Act (CEA). Under the exclusivity clause, any instrument that is deemed to be a futures contract falls within the exclusive jurisdiction of the Commodities Futures Trading Commission (CFTC). Such an instrument cannot trade as a security, an insurance contract, or a banking product. It can only trade as a futures contract, and it can only trade on a futures exchange through futures dealers.

The exclusivity clause has a very broad impact, because the term "futures contract" is interpreted very expansively by the courts and by the CFTC. As Chairman Greenspan has indicated to the Committee on Banking, Housing, and Urban Affairs, "any financial contract has some element of futurity," and even a slight element of futurity may be enough to label that instrument a future. Thus, virtually any financial instrument may be deemed a futures contract under the CEA. If it is deemed a futures contract, it cannot be sold as a banking product, a swap, an insurance contract, or a security.

This interpretation of the exclusivity clause has produced confusion in the financial markets and led to the involvement of the courts when new financial products are developed. The developers of these innovative products are responding to perceived economic needs, but their costs of operations are raised because they repeatedly must consult lawyers regarding the lawfulness of their new product, the regulatory hurdles that must be overcome, and the almost certain litigation that would be commenced by those who perceive a threat from the innovation. These higher operating costs are passed on to the banks, manufacturing firms, and others that need capital to maintain and to bolster their operations, especially in periods such as the current economic downturn.

Faced with these restrictions and the attendant uncertainty and increased costs, some issuers have taken their business overseas, where the exclusivity clause is inapplicable. Others must issue securities in traditional form, even if that form is less efficient and more costly. As a result, the cost of capital in the United States is higher than it might otherwise be.

The harm that can be caused by the exclusivity clause has been proven again and again in recent years. Index participation certificates have been barred from the securities markets. Hybrid corporate debt instruments, in which an issuer promises to make interest payments based on the change in the price of a commodity, have also fallen under a cloud of uncertainty. The Brent oil market, one of the world's largest commercial oil markets, was disrupted when a court found that market to be a U.S. futures market. Plans to develop commodity-linked warrants have been shelved. Swap transactions, which have grown into a $3 trillion market in terms of notional principal amount, have at times been chilled by the threat of CFTC jurisdiction.

Recently, the Senate Agriculture Committee reported out Title III of S.207, the Futures Trading Practices Act, which would preserve the impediments to innovation in financial products. As currently drafted, S.207 would codify into law the current interpretation of the exclusivity clause, unless (i) the CFTC determines that a product meets an unrealistic mathematical "50 percent value" test as to the degree to which its "value" is based on a commodity or (ii) the CFTC issues a written exemption for the product. As Chairman Greenspan wrote to Chairman Riegle in a letter dated March 27, 1991, "The 50 percent value test embodied in the bill is arbitrary, as will be any procedure for determining the value of the commodity component of a financial instrument, and could yield anomalous results for similarly structured instruments." It is unlikely that the CFTC would allow any equity-related hybrid to be exempt under this test in light of its current analysis that any equity product with characteristics of both futures and securities is deemed to be 100 percent a futures product. In addition, the exemptive authority given to the CFTC is narrow and requires a cumbersome exemptive hearing process that places the burden on the proponent to prove the product's legality. This process itself is an obstacle to innovation and creates uncertainty because an exemption, once granted, may always be revoked.

A more pro-competitive approach is warranted instead of the approach of S.207, which will only increase costs and uncertainty, forestall innovation, and reduce the competitiveness of the U.S. financial markets. Under this pro-competitive approach, any instrument approved by banking regulators as a banking product could be offered and sold as such, regardless of whether it has any elements of a futures contract or a security. By the same token, any instrument approved by the CFTC as a futures contract could trade on a futures exchange, subject to futures regulation. Of course, any instrument approved and regulated by the SEC as a security could be sold and could trade as a security. This free market approach, under which an instrument could trade in one, two, or even three different markets, would benefit investors, issuers, and market professionals alike and would promote economic growth and prosperity through financial innovation.

SUBCOMMITTEE RECESS

Senator HOLLINGS. You are doing an outstanding job. We appreciate your appearance here this morning, all three of you. Thank you very much. That concludes the hearing.

[Whereupon, at 11:35 a.m., Friday, February 22, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, February 28.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

THURSDAY, FEBRUARY 28, 1991

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:03 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Rudman, Bumpers, and Kasten.

THE JUDICIARY

SUPREME COURT OF THE UNITED STATES

STATEMENTS OF:
- **SANDRA DAY O'CONNOR, JUSTICE**
- **ANTONIN SCALIA, JUSTICE**

ACCOMPANIED BY:
- **LARRY AVERILL, ADMINISTRATIVE ASSISTANT TO THE CHIEF JUSTICE**
- **AL WONG, MARSHAL**
- **TONY DONNELLY, DIRECTOR OF BUDGET AND PERSONNEL**

BUDGET REQUEST

Senator HOLLINGS. This morning the subcommittee will continue its review of the fiscal year 1992 budget by hearing testimony from the Supreme Court, the Judiciary, and the Federal Trade Commission.

We will begin with the Supreme Court, whose 1992 request totals $25,093,000. The budget request for the Court is again very modest this year, representing an increase of $2.6 million over the amount appropriated last year, and this increase includes the $54,000 requested in the 1991 supplemental to cover the justices' pay and other required matters.

Appearing on behalf of the Supreme Court is Justice Sandra Day O'Connor and Justice Antonin Scalia. We welcome you both this morning and are glad to hear from you.

STATEMENT OF JUSTICE O'CONNOR

Justice O'CONNOR. Thank you, Mr. Chairman. Thank you for receiving us. We have with us today, as in the past, Larry Averill, who is the Administrative Assistant to the Chief Justice, and Al Wong, who is the Marshal of our Court, and Tony Donnelly, who is the Director of Budget and Personnel at the Supreme Court.

I think you already noted, Mr. Chairman, what the request is, and the proposed increase in salaries and expenses for fiscal year 1992 is made up entirely of base adjustments.

It includes no new employees; no new programs; $1.6 million of the base adjustments are uncontrollable, mandated increases in salary and benefit costs. The remaining base adjustments of $280,000 represent inflationary increases in such things as postage and printing and matters of that kind.

We have reduced the budget base by $105,000 for recurring items that are now funded by the attorney admission fees. We, perhaps, should note for you that last year we had asked for $100,000 to begin a new program to replace older units with personal computers. We have found the word processors, the personal computers, so satisfactory that we are now trying to install them in the chambers of the justices as well. It is just a wonderful system.

We will have now the legal computer-based research available right there in our chambers on the word processor.

Senator RUDMAN. We all have them, of course.

Justice O'CONNOR. We now have them as well.

Senator RUDMAN. Most of us haven't learned to use them, yet, but we have them.

Justice SCALIA. They are wonderful.

Senator RUDMAN. I use mine, actually. I do not know if Senator Hollings does.

PREPARED STATEMENTS

Justice O'CONNOR. I have a written statement that I will submit.

Senator HOLLINGS. It will be included in its entirety in the record.

[The statements follow:]

STATEMENT OF JUSTICE SANDRA DAY O'CONNOR

Mr. Chairman and Members of the Committee, Justice Scalia and I appreciate this opportunity to appear before your Committee to address the budget requirements of the Supreme Court for the fiscal year 1992.

We have with us today Larry Averill, Administrative Assistant to the Chief Justice; Alfred Wong, Marshal of the Court; and Tony Donnelly, Director of Budget and Personnel.

The budget request is divided between the Salaries and Expenses of the Court and Care of the Building and Grounds. The total fiscal year 1992 budget for Care of the Building and Grounds is $4,306,000. Mr. George White, Architect of the Capitol, will submit a statement to the Subcommittee regarding his segment of the total budget.

Our total fiscal year 1992 budget estimate for Salaries and Expenses is $20,787,000. This is an increase of $1,704,000 over the budget authority for 1991. The 1991 budget authority has been adjusted to reflect a proposed supplemental appropriation for $54,000 to fund the fiscal year 1991 cost of the increased pay and Medicare contributions of Justices and Statutory Court Officers.

The proposed increase of $1,704,000 for fiscal year 1992 is made up entirely of base adjustments. It includes no new employees or programs. $1,601,000 of the base adjustments represent uncontrollable mandated increases in salary and benefit costs. The remaining base adjustments of $208,000 are for inflationary increases in various fixed costs such as postage and printing. The increases in base adjustment items allows the Court to keep up with the rising costs of its normal operations.

We have reduced the budget base by $105,000, which represents recurring items from our budget base that are now funded by the Attorney Admissions Fees. The recurring items include $50,000 for expenses related to the Supreme Court bar, and $55,000 for expenses related to In Forma Pauperis cases.

Although we are proposing no specific program increases this year, I would like to mention the status of the computer improvement program increase we requested last year. We requested $100,000 last year to begin the first phase of a three year program to fund the replacement of our Hewlett-Packard terminals with personal computers. The Court has two computer systems. The Hewlett-Packard system supports the Clerk's case docketing system, the integrated library system, and all word processing throughout the Court other than the Chambers' opinion work. An Atex computer system supports the Court's opinion process from the drafting, or word processing, stage through the typesetting stage just before publication. The Atex system is 11 years old and it lacks many of the functions available in personal computers.

We have concluded that the heart of the Court's work—the opinion writing process—could be vastly improved by conversion from the 80 Atex terminals to personal computers. With the aid of modern software products that are available for personal computers, as well as the increased power available at each work station, the word processing phase of our work will be facilitated by the change to personal computers. We hope to complete this conversion before the start of the next Term.

Funding for this conversion, which is already underway, will come from the $100,000 requested last year, as well as from funds planned for other data systems projects this year. If necessary, we will request additional funds, but we anticipate that the cost of the project can be covered from within our existing budget. The Committee's favorable action on our fiscal year 1990 and 1991 budgets has enabled the Court to address some scheduled data systems improvements ahead of schedule. We have also postponed other lower priority projects. The cost of the entire conversion project is estimated to be approximately $600,000. We will resume the original project to replace the Hewlett-Packard terminals when the conversion of the Atex terminals to personal computers is complete.

STATEMENT OF GEORGE M. WHITE, ARCHITECT OF THE CAPITOL

Mr. Chairman and Members of the Committee: I am pleased to present the fiscal year 1992 appropriation request for the care and maintenance of the Supreme Court Building and Grounds.

As you know, the Architect of the Capitol, by authority of the Act of May 7, 1934, is responsible for the structural and mechanical care of the United States Supreme Court Building and Grounds. We are not charged with responsibility for custodial care, which is under the jurisdiction of the Marshal of the Supreme Court and is provided for in another appropriation.

Fiscal year 1992 budget request

In our prepared justifications for 1992, we have requested a total appropriation of $4,306,000. This represents a net increase of $853,000 over the total of $3,453,000 for 1991. The net increase of $853,000 is represented by mandatory increases to the base in the amount of $98,000 including $35,000 for the January 1991 cost of living raise; $1,000 for overtime pay as authorized by law; $24,000 to meet an anticipated cost-of-living raise in January 1992; $4,000 for one extra compensable day in fiscal year 1992; $11,000 for payment to the Federal Employee's Health Benefits Fund; and $23,000 for increased contributions to employees' retirement funds.

Also, included in the increase are program items totaling $755,000 for three projects: $250,000 for the replacement of PCB transformers and cable; $250,000 for the renovation of elevator number 4; and $255,000 for the installation of a permanent handicapped ramp on the north side of the Supreme Court building.

That concludes my statement on the needs for fiscal year 1992 for the Care of the Supreme Court Building and Grounds.

I would like now to present a summary of another item, the construction of an office building for the Judiciary.

Judiciary Office Building

My previous statements to the Committee have spelled out the history of the legislation leading to the development of the Judiciary Office Building now rising on Capitol Grounds just east of Union Station. I am pleased to report that work is progressing according to our original schedule, and substantial completion is still anticipated to be achieved by October 1992.

The building will be occupied primarily by the agencies of the Judicial Branch that are now scattered among several locations. Subject to approval by the Judiciary Office Building Commission, the rest of the building will be occupied by two small independent executive branch agencies selected as tenants by the General Services Administration, the Federal Labor Relations Authority and the U.S. Commission on Civil Rights. In addition, a portion of the building will be occupied by offices of the Architect of the Capitol, which will vacate space in two House office buildings for this purpose. The AOC occupancy has been directed and approved by the House Office Building Commission and the Senate Committee on Rules and Administration.

I am also pleased to report that the cost of construction is significantly lower than our estimates of last year as a result of cost cutting value engineering policies during the design stage, and the slack in construction in the local economy. Our timing on construction has proved to be fortuitous and significant cost savings from final budget estimates are being realized on bids received by the Construction Manager.

We can thus estimate at this time that at the end of the construction period we may well have a significant construction saving, based on amounts not expended and the interest earned on unexpended funds during the period. This surplus will be in addition to the Operating Reserve Fund created at the outset of development to cover any extraordinary expenses for renovation or major repair. This Operating Reserve Fund will be kept intact so as to obviate any need for appropriated funds for this purpose over the 30 year lease period.

It is my intention to propose to the Judiciary Office Building Commission, which by law provides direction to me in connection with the design, construction, financing, occupancy and maintenance of the building, that surplus funds from construction savings and rental income received in advance of debt amortization be used to reduce the cost of the rent to be paid for the 30 years before the building reverts to outright ownership by the Government. Of course, it is this Committee that must appropriate the rent to be paid for occupancy of the building by one prime tenant. My intention is to make every effort to see that surplus funds reduce the cost to the Judiciary of its occupancy of the building over the term of its 30 year lease.

In that regard it should be remembered that unlike the lease of other private sector or GSA administered buildings, the base rent in the Judiciary Office Building—that is, the amount actually needed to amortize the indebtedness—will remain stable over the entire 30 years of the lease and will not escalate. Operating expenses will, however, be subject to change because of inflation and other factors that may affect building operations over 30 years.

I know that the Committee is interested in the amount of rent that will need to be appropriated upon occupancy of the building by the judicial agencies at the beginning of fiscal year 1993. A completely accurate figure will not be possible to develop until we know with greater certainty how much our surplus will be, which, as I have stated, will be used to reduce the rental cost. The amount of reduction will ultimately depend on interest rates in effect in 1993, which will affect the stream of interest income to be used to assist in the payment of rent to amortize indebtedness over the 30 year period. In addition, until the building is operational for at least a year it will not be possible to develop a projection of operating costs firmly grounded in experience.

Nevertheless, for planning purposes we have developed some tentative and preliminary rounded estimates for your information. Beginning with occupancy of the building by the Judiciary in October 1992, which is the beginning of fiscal year 1993, we estimate the basic fixed rent to be charged to the Judiciary will be approximately $23.26 per rentable square foot, which will reflect the application of the currently estimated surplus from construction and the fact that rent will be due somewhat in advance of the first required repayment of debt. As I have noted, this fixed rent payment will not change over 30 years. To this base rent we now estimate that approximately $8.61 per rentable square foot will be added for operating costs, for a total occupancy cost of $31.87 per rentable square foot, or a total annual occupancy cost appropriation for fiscal year 1993 for the Judiciary of approximately $15,425,000 based on a current estimate of 484,000 rentable square feet. The rentable square footage estimate may be adjusted downward to take account of jointly shared space.

Were the base rent payments to be deferred until needed for debt amortization in mid-1994 to begin to repay indebtedness, we estimate that the base rent due for 30 years would rise by approximately $3.30 per rentable square foot. (The operating expense reimbursement of approximately $4,167,000 would be due and payable in fiscal year 1993 without regard to the amortization schedule.) This rate compares very favorably with the rental rates anticipated by the Judiciary in its existing space for the same period. I would like to underscore the point, however, that these numbers are preliminary and are subject to change, particularly with respect to certain interest rate assumptions and ultimately realized construction savings. Experience indicates that unforeseeable factors can diminish apparent savings at the end of the day.

In that regard it should be noted further that the cost of the land for the building is not regarded as a project cost and is not being amortized by rental payments. Accordingly, the land has in effect been contributed to the project by the Legislative Branch of government, which has owned it for many decades. An independent recent appraisal of the land by a consultant to GSA appraised its value at $57 million, which we believe is quite conservative. Of course, the Legislative Branch will retain the benefits of the parking that was on site prior to construction and that will be replaced by parking for Legislative Branch employees in the garage of the building.

Although this data is not directly relevant to the 1992 budget request, I hope this information will assist the Committee in planning for fiscal year 1993 and subsequent years.

That concludes my overall statement, Mr. Chairman. I shall be pleased to answer any questions on the fiscal year 1992 budget request or the Judiciary Office Building that you or the Committee may have.

BIOGRAPHICAL SKETCH OF SANDRA DAY O'CONNOR

Born March 26, 1930 in El Paso, Texas, daughter of Harry A. Day and Ada Mae Wilkey Day. Married John Jay O'Connor III in 1952. Three sons, Scott, Brian, and Jay.

Education

Stanford University, B.A., 1950, magna cum laude; LL.B., 1952, Order of the Coif, Board of Editors, Stanford Law Review.

Judicial Offices

Nominated by President Reagan as Associate Justice of the United States Supreme Court on July 7, 1981; confirmed by the United States Senate on September 22, 1981; and took oath of office on September 25, 1981.

Appointed to the Arizona Court of Appeals by Governor Bruce Babbitt and served from 1979 to 1981.

Elected judge of the Maricopa County Superior Court, Phoenix, Arizona, and served from 1975 to 1979.

Legislative Offices

Appointed State Senator in 1969 and subsequently reelected to two two-year terms, serving in the Arizona State Senate from 1969 to 1975; elected Senate Majority Leader in 1972; served as Chairman of the State, County, and Municipal Affairs Committee in 1972 and 1973; also served on the Legislative Council, on the Probate Code Commission, and on the Arizona Advisory Council on Intergovernmental Relations.

Legal Positions

Deputy County Attorney, San Mateo County, California, 1952 to 1953; Civilian Attorney for Quartermaster Market Center, Frankfurt, Germany, 1954 to 1957; private practice of law in Maryvale, Arizona, 1958 to 1960; Assistant Attorney General, Arizona, 1965 to 1969.

Civic Activities

Member, National Board of the Smithsonian Associates, 1981 to present; President, member, Board of Trustees, The Heard Museum, 1968 to 1974, 1976 to 1981; member, Salvation Army Advisory Board, 1975 to 1981; member, Vice President, Soroptimist Club of Phoenix, 1978 to 1981; member, Board of Visitors, Arizona State University Law School, 1981; member, Liaison Committee on Medical Education, 1981; member, Advisory Board, and Vice President, National Conference of Christians and Jews, Maricopa County, 1977 to 1981; member, Board of Trustees, Stanford University, 1976 to 1981; member, Board of Directors, and Secretary, Arizona Academy, 1969 to 1975; member, Board of Junior Achievement, Arizona, 1975 to 1979; member, Board of Directors, Phoenix Historical Society, 1974 to 1978.

Other Activities

Member, Anglo-American Exchange, 1980; Chairman, Arizona Supreme Court Committee to Reorganize Lower Courts, 1974–1975; Chairman, Maricopa County Bar Association Lawyer Referral Service, 1960–1962; former member, State Bar of Arizona Committees on Legal Aid, Public Relations, Lower Court Reorganization, Continuing Legal Education; Chairman, Maricopa County Juvenile Detention Home

Visiting Board, 1963–64; Chairman, Maricopa County Superior Court Judges' Training and Education Committee, 1977–79; member, National Defense Advisory Committee on Women in the Services, 1974–76; member, Arizona State Personnel Commission, 1968–69; Vice Chairman, Arizona Select Law Enforcement Review Commission, 1979–80; member, Maricopa County Board of Adjustments and Appeals, 1963–64; member, Arizona Criminal Code Commission, 1974–76.

Memberships in Professional Organizations

American Bar Association, State Bar of Arizona, State Bar of California, Maricopa County Bar Association, Arizona Judges' Association, National Association of Women Judges, Arizona Women Lawyers Association.

BIOGRAPHICAL SKETCH OF ANTONIN SCALIA

Born March 11, 1936 in Trenton, NJ. Married Maureen McCarthy, September 10, 1960. Children: Ann Forrest, Eugene, John Francis, Catherine Elisabeth, Mary Clare, Paul David, Matthew, Christopher James, and Margaret Jane.

Education

Georgetown University and University of Fribourg (Switzerland), A.B., 1957; Harvard, LL.B., 1960; note editor, Harvard Law Review; Sheldon fellow, Harvard University, 1960–61.

Judicial Offices

Nominated by President Reagan to U.S. Court of Appeals for the District of Columbia Circuit; took oath of office August 17, 1982; nominated by President Reagan as Associate Justice of the United States Supreme Court; took oath of office September 26, 1986.

Government Service

General counsel, Office of Telecommunications Policy, Executive Office of the President, 1971–72; chairman, Administrative Conference of the United States, 1972–74; Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, 1974–77.

Law Teaching

Professor of law, University of Virginia, 1961–74 (on leave 1971–74); scholar in residence, American Enterprise Institute, 1977; visiting professor of law, Georgetown University, 1977; professor of law, University of Chicago, 1977–82; visiting professor of law, Stanford University, 1980–81.

Law Practice

Admitted to the Ohio Bar, 1969, Virginia Bar, 1970; in private practice with Jones, Day, Cockley and Reavis, Cleveland, Ohio, 1961–67.

Other Offices

Editor, Regulation Magazine, 1979–82; chairman, ABA Section of Administrative Law, 1981–82; chairman, ABA Conference of Section Chairmen, 1982–83; board of visitors, J. Reuben Clark Law School, Brigham Young University, 1978–81.

LETTER FROM TONY DONNELLY

MARCH 21, 1991.

Hon. ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, and State, The Judiciary, and Related Agencies, Committee on Appropriations, United States Senate, Washington, DC.

DEAR MR. CHAIRMAN: On behalf of Chief Justice Rehnquist and the Supreme Court Budget Committee, I respectfully submit additional information relating to the fiscal year 1992 budget request for the Supreme Court of the United States.

Statistics on applications for relief to individual Justices, applications for stay in capital cases and Chambers opinions, will be included in future budget requests.

This information is submitted for record.

Sincerely yours,

TONY DONNELLY,
Director of Budget and Personnel.

	Applications for relief to individual justices	Applications for stay in capital cases	Chambers opinions
1970	[1] 1,353		8
1975	1,165		10
1980	1,096	32	11
1981	1,145	39	7
1982	1,077	45	19
1983	1,072	76	14
1984	982	62	11
1985	1,050	66	6
1986	951	86	11
1987	1,001	60	3
1988	1,064	90	5
1989	929	71	
1990 [2]	658	47	2

[1] 1971.

[2] As of March 2, 1991.

COURT WORKLOAD

Senator HOLLINGS. When you note the word processors, I remember when Lewis Powell came to the Court, we heard that his office in Richmond was far better equipped than you folks on the Court itself, and the search was for a clerk, to find someone who could type. That was nonsense, so if you have any other advancements in trying to take care of that workload, please let this committee know, because you folks have been far more frugal and conscientious about spending than we have.

How do you keep up with the workload? We remember hearing from Chief Justice Burger and the Intermediate Appellate Court, and everything else, and now we seem to be keeping up and not needing any more money. Are you keeping these fellows working? [Laughter.]

Justice O'CONNOR. Well, you helped us here in the Congress, Mr. Chairman, because you amended the law to make our mandatory appellate jurisdiction almost entirely discretionary. That was a change that all the members of the Court have supported for some time, and we have found that that has resulted in a reduction in the number of argued cases.

Now, maybe there are other reasons that account for part of the reduction. I suppose we are on a cycle and we are probably at the bottom of that. I expect it to go up again, but we have fewer argued cases this term, although we have an increased number of petitions.

WITNESS FEES FOR PRISONERS

Senator HOLLINGS. One thing that hit us in the committee, Madam Justice, was the matter of the witness fees. I think you reversed the tenth circuit where they denied prisoners the receipt of witness fees. I only learned this last night, in looking for the decision, but in a line or two, what was the rationale there? We always thought witness fees were for people who, in the normal course of work, would be losing their salaries. Here, they are being punished, serving time in jail. They are not losing any salaries, and now it is going to cost us $7 million.

Justice O'CONNOR. Mr. Chairman, I suppose that a very simple amendment to the witness fee statute would take care of that.

Senator HOLLINGS. Good.

Justice O'CONNOR. What the Court did was simply apply the statute as it was written. The statute said all witnesses will be paid fees, but there will be no subsistence paid to prisoners. It didn't say you won't pay fees and subsistence to prisoners.

Senator HOLLINGS. So, we need to go back to the statute itself, and make the correction there.

Justice O'CONNOR. It would be a very simple amendment to the statute.

Senator HOLLINGS. Madam, we can amend laws better than we can spend the money. [Laughter.]

Let me yield to my colleague, Senator Rudman.

Senator RUDMAN. I was just going to say, Mr. Chairman, just on the point that the Congress gets very upset sometimes when you interpret statutes exactly as we have written them. [Laughter.]

Justice O'CONNOR. It can be frustrating.

REPRESENTATIONAL FUNDS

Senator RUDMAN. Of course, we try to take care of poorly written statutory language in report language, and Justice Scalia and I talked about that last year. Talking about report language, let me ask you this question: A couple of years ago, we addressed a funding problem that you had——

Justice O'CONNOR. Yes.

Senator RUDMAN [continuing]. By allowing the use of your fees for certain purposes.

Justice O'CONNOR. Yes.

Senator RUDMAN. My understanding is that in the U.S. Supreme Court, when you entertain foreign dignitaries, or other officials, or when you have a reception for dignitaries, that the justices often pay for such activities out of their own pockets; is that correct?

Justice O'CONNOR. I have paid for some of those myself.

Senator RUDMAN. Well, let me ask you this: It does not happen that often?

Justice O'CONNOR. No.

Senator RUDMAN. Should we put language in this year that allows you to use that same fee base for certain representation expenses so that—I mean, if the U.S. Supreme Court has to entertain the Lord Chancellor at a reception, it seems to me that the Government ought not to ask the justices to pay for that just as a matter of principle.

Justice O'CONNOR. I think it would be helpful.

Senator RUDMAN. Is that something that you would like us to do?

Justice O'CONNOR. Yes.

Senator RUDMAN. You have not asked.

Justice O'CONNOR. No; we have not, but we would like that.

Senator RUDMAN. I was told this by a member of the Administrative Office of the Courts.

Justice SCALIA. I thought about asking, Senator. It would be a good idea.

Senator RUDMAN. Then let's have our staff work with the administrative office to develop language allowing the fees to be used for the library and also for such representation funds as the Chief Justice might decide are necessary——

Justice O'CONNOR. That would be very helpful.

IN FORMA PAUPERIS PETITIONS

Senator RUDMAN [continuing]. And leave it to his discretion.

Let me ask you just a couple of quick questions. In your budget submission, it is interesting to note that there is an increase in the number of case filings for in forma pauperis cases and there is a decrease of original and paid cases.

Senator RUDMAN. Is there any reason for that?

Justice O'CONNOR. Well, I think there probably is, and I am just guessing, but we have more incarcerated Federal prisoners now than in the past with the sentencing guidelines and mandatory sentencing.

Senator RUDMAN. They are filing more petitions?

Justice O'CONNOR. I think most of those prisoners are filing petitions and that just seems to be the nature of the game.

And most of those are in forma pauperis petitions, so I think that is why we are seeing an increase. Would you agree?

Justice SCALIA. I think so, and especially since we have a whole category of petitions now that we never had before, and that is on sentencing. Previously, you could not appeal a sentence that was within the statutory maximum; only the conviction on the crime. A fairly large number of the petitions we get now are appeals contending that the sentencing guidelines have not been properly applied.

Senator RUDMAN. That is, I am sure, probably exactly what has happened.

CERTIORARI PETITIONS

One other point, and it is my last one, actually. In the view of many students and scholars of the Court, the most important part of your workload are the certiorari petitions, because it is there that threshold decisions are made——

Justice O'CONNOR. Exactly.

Senator RUDMAN [continuing]. That decide whether or not people are going to have their cases heard.

Justice O'CONNOR. Exactly.

Senator RUDMAN. I expect that is an enormous responsibility. I suppose if you let one slip through the cracks that is very important, it could come back some day.

Justice O'CONNOR. If it is important, it will be back, I suspect.

Senator RUDMAN. At any rate, it does not get taken care of then. I understand that your workload there is very high. How many petitions did the Court receive in the last year, cert petitions?

Justice O'CONNOR. We received, I think, 5,187 in the 1990 term.

Senator RUDMAN. And the justices in one way or another, of course, have to look at every one of those petitions.

Justice O'CONNOR. Exactly, every one.

Senator RUDMAN. I think that is interesting to note when people talk about there being a slight reduction in the caseload of the Court. Those petitions come in at the rate of, what is that, several hundred a week?

Justice O'CONNOR. Well, I review them week in, and week out, in fact, every day.

Senator RUDMAN. One hundred a day.

Justice O'CONNOR. It is a part of the work.

Senator RUDMAN. You never know where buried in one of those petitions is the case of the century, so to speak. I just wanted to have that on the record. What has been the trend in terms of the cert petitions? Is it staying stable; is it increasing?

Justice O'CONNOR. It is a gradual increase.

Senator RUDMAN. It is?

Justice O'CONNOR. In 1970, it was 3,419; in 1980, it was 4,174; and in 1990, 5,187. It has been a steady increase.

Senator RUDMAN. The length of those petitions under your rules is how many pages, generally?

Justice O'CONNOR. I do not know that we have a page limit.

Senator RUDMAN. What would they average?

Justice SCALIA. Thirty pages, maybe.

Senator RUDMAN. Thirty pages at most?

Justice SCALIA. Around.

Senator RUDMAN. So that is around 3,000 pages of legal argument a week on the threshold question as to whether or not you want to take jurisdiction and hear the case.

Justice O'CONNOR. Exactly.

Justice SCALIA. Yes.

Senator RUDMAN. Which is a part of the workload that, I think, people are really not aware of.

Justice SCALIA. Well, it is quite impossible for all of us to read all of them.

Senator RUDMAN. Each case.

Senator HOLLINGS. Fifteen a day, including Saturday and Sunday.

Senator RUDMAN. You obviously have to read summaries; you have to discuss them with the clerks.

Justice SCALIA. We have to read summaries and that is how I do most of mine. Very rarely do I go back to the text.

Senator RUDMAN. Thank you both. I do not have further questions. Justice.

Justice O'CONNOR. Thank you.

EMERGENCY MOTIONS IN DEATH CASES

Justice SCALIA. Senator, I wanted to add one other thing relating to an unrecognized part of our work that has been increasing as the number of cert petitions has, although there is not a product that shows that the increase is occurring. I refer to the number of emergency motions in death cases that we receive. We are getting more and more of those every year. Most of the burden goes on the justice from the particular circuit, but ultimately, it gets to the whole Court. As more and more States have reinstituted the death penalty and the number of executions has increased, that has become a significant part of our work.

Senator RUDMAN. I think that is a very important point. When people look at the workload, if they ignore these numbers, it would be like looking at the U.S. Senate and saying, "Your workload depends on how many bills the Senate passed." That has nothing to do with your workload. It depends on many factors including how many bills are filed and how many hearings we hold. I want to thank you for being here this morning.

Justice O'CONNOR. Thank you, Senator Rudman. Thank you, Mr. Chairman.

Senator HOLLINGS. Senator Bumpers?

LAW CLERKS

Senator BUMPERS. Just a couple of questions.

Out of the 5,000 petitions for certiorari, how many were granted last year?

Justice O'CONNOR. We accepted for full oral argument 120 cases, and we took another 60 for resolution without full argument and briefing. It is a small percentage, as it has always been.

Senator BUMPERS. How many clerks do you have?

Justice O'CONNOR. Four.

Senator BUMPERS. You have four. Is that what each justice has? Does the chief have more than that?

Justice O'CONNOR. Well, the chief uses three.

Senator BUMPERS. Is that just to prove he is smarter than everybody else? [Laughter.]

Justice O'CONNOR. I do not know. That is what he has always done, and Justice Stevens still has three, I believe.

Justice SCALIA. I think they get smarter clerks, Senator. [Laughter.]

Senator BUMPERS. I was just curious; when you consider the caseload you just described, frankly, I would have thought you had more, many more than that. I would have thought you had seven or eight.

Senator RUDMAN. In cert petitions you are talking about?

Senator BUMPERS. Clerks.

Senator RUDMAN. Oh, clerks.

Senator BUMPERS. No; I am just talking about clerks, generally.

Senator HOLLINGS. The secretaries for those clerks are at least speedy.

Justice O'CONNOR. No; no secretaries.

Senator HOLLINGS. You still do not have them yet? Would you suggest that?

Justice O'CONNOR. No; I would not. We want them to use the word processors. [Laughter.]

Senator HOLLINGS. We have some discipline here this morning. [Laughter.]

Senator RUDMAN. This may be a commercial for the computer company.

Justice SCALIA. Senator, there is a point of diminishing returns in law clerks. I mean, a certain amount of——

Senator BUMPERS. How do you know when you have reached it?

Justice **SCALIA**. You know you have reached it when you feel that you do not know the case well enough. I am already at the stage where I divide up all my cases among my four law clerks. Each one of those law clerks knows the particular case four times better than I do. The more clerks you have, the greater that ratio becomes.

That is not too healthy. It is not necessarily the case that the more clerks you give, the more cases a Judge can pump out. In the last analysis it requires the personal grasp of the judge, and a law clerk cannot give that.

Senator **BUMPERS**. The reason I asked the question is, I was really astounded by the number of petitions for cert you got. It was an excellent question Senator Rudman asked, but I was also just doing a little mathematical equation as we went through the questioning, and that translates into roughly 10 cases a week per justice, and if you have got four clerks, that means each one of those clerks is going to have 2½ cases assigned to him for that particular week. I am sure it does not work just precisely this way, but I am just trying to understand your workload and whether you need additional help or not.

Justice **O'CONNOR**. I think we are doing all right, Senator Bumpers.

Senator **BUMPERS**. I am not going to try to impose more people on you.

PERSONAL COMPUTERS

Justice **O'CONNOR**. No; I have not heard any suggestion from any of the justices that we cannot function pretty well as it is with what we have.

What we are thrilled about getting, though, are these individual PC's with the research right there, and it is just wonderful.

Senator **RUDMAN**. Are they all networked?

Justice **O'CONNOR**. Not yet, but they will be.

Senator **RUDMAN**. They are going to be networked.

Justice **O'CONNOR**. They will be.

Senator **RUDMAN**. And it will give you access to everybody else's data?

Justice **O'CONNOR**. Yes; it is hard to do in our building, because the building is a little older, and what they did was build little channels under the floor for electrical lines, and those channels are almost full. So we have a little bit of a problem, but we will work it out.

Senator **BUMPERS**. I went with my daughter over to the law school. She goes to Georgetown. What those students have compared to what we had just blows my mind.

Justice **O'CONNOR**. It is amazing.

Senator **RUDMAN**. This hearing is a juxtaposition of all our other hearings.

Justice **SCALIA**. Whatever you learned is probably wrong now, Senator. That is the other thing. [Laughter.]

Senator **BUMPERS**. I have a minor in economics. I promise you all that is out of the way.

Senator **RUDMAN**. This is the only hearing that we will conduct this year in which the committee suggests that maybe the witnesses might like more and they say, "No, we are doing fine." [Laughter.]

It is the only hearing where that will happen.

Senator HOLLINGS. You can tell from the questions who expects to be practicing next year. [Laughter.]

SENTENCING GUIDELINES

Senator BUMPERS. I have one final question, Mr. Chairman. I would like for each of you to comment on how well you think the sentencing guidelines are working.

Justice O'CONNOR. That is hard to say. We are having our first case under the sentencing guidelines that is an argued case in the March sitting. I just read the briefs in it. It is the first one we have taken. We have had a number of petitions, but the Sentencing Commission itself is in a position to correct misunderstandings that have emerged by virtue of drafting amendments to the guidelines. I think that process is going on.

We are seeing quite a few petitions now coming through the pipeline by prisoners, addressing questions under the guidelines.

It is probably a little too soon to say whether the Commission will be able to straighten out any confusion that exists among Federal courts about the implementation, but it certainly is being implemented as you have put it in place.

Senator BUMPERS. You provoked a question in my mind a moment ago when you said, "You are now beginning to get an increase on appeal on sentencing." Do you have any thoughts on this?

Justice SCALIA. No; but I would be surprised if you didn't get some thoughts from Judge Arnold.

Senator BUMPERS. He has those cases before you do.

Justice SCALIA. That is where the crest of the wave hit.

Senator BUMPERS. I already have some idea about how he feels about it.

Senator RUDMAN. I would just say to Senator Bumpers that I have talked to a number of the circuit judges, and I think you get a pretty good feel for their view on that. We are going to have some of them here, so that is a good question for them.

Senator BUMPERS. Thank you, Mr. Chairman.

Senator HOLLINGS. That is the next panel. We do appreciate both of you appearing here this morning, and your associates.

Justice O'CONNOR. Thank you. Goodbye. Thank you.

Judge ARNOLD. Good morning, Mr. Chairman.

Senator HOLLINGS. Good morning. Judge, are you doing all right?

Judge ARNOLD. Yes, sir; I am doing great.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Senator Rudman has some questions to be answered for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

ATEX TERMINALS

Question. Your budget proposes a $1.7 million increase consisting solely of adjustments to base. No funds are requested for new employees or programs. However, your statement indicates that with previously appropriated funds, you intend to convert 80 Atex terminals to personal computers.

How will this conversion facilitate your work?

Answer. The Court's opinion process will be much more efficient when the 80 Atex terminals are replaced with personal computers that function as stand alone computers. Users will no longer share computer memory and processing time. The Court's opinions and other Chambers documents will be drafted using the most modern software currently available. Word processing software designed for personal computers is faster and more powerful than that installed on the Court's Atex computer eleven years ago. It makes the mechanics of moving and rearranging text and footnoting much easier. It also allows the Westlaw and Lexis legal research data bases to be accessed on each terminal. Also, since personal computers are more flexible, it will be easy to implement other software products that enhance office productivity, i.e. electronic mail, electronic calendar and scheduling.

Question. Will this conversion improve your access to legal research databases?

Answer. Yes. Each law clerk and Justice will be able to access legal research databases directly through the personal computers.

Question. On page 4, your statement seems to indicate that to accommodate this project, you have postponed other projects. What projects have been postponed?

Answer. The project to convert the Court's Hewlett Packard terminals to personal computers in the administrative offices of the Court has been postponed until conversion of the Atex terminals to personal computers is complete in the Chambers of the Justices. Other projects that have been postponed include the enhancement of computer equipment and software that support the Court's centralized data processing. The purchase of additional disc drives and storage space is no longer necessary since much of the Court's data processing will be decentralized by the conversion to personal computers.

THE JUDICIARY

STATEMENT OF JUDGE RICHARD S. ARNOLD, CHAIRMAN, BUDGET COMMITTEE OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

ACCOMPANIED BY:

KENNETH K. HALL, JUDGE, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT

L. RALPH MECHAM, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

BUDGET REQUEST

Senator HOLLINGS. The subcommittee will now hear from the judiciary, whose request for 1992 is $2,546,941,000. This is an increase of $590 million, a 30-percent increase over the amount appropriated last year, including, of course, the $79,874,000 supplemental request.

Testifying on behalf of the courts is Judge Richard S. Arnold, Chairman of the Budget Committee of the Judicial Conference of the United States, and joining Judge Arnold, and we welcome Judge Arnold, are Judge Kenneth K. Hall of the Court of Appeals of the Fourth Circuit and L. Ralph Mecham, Director of the Administrative Office.

We welcome you here this morning. Judge Arnold, we would be glad to hear from you now.

Judge ARNOLD. Mr. Chairman, I appreciate that very much. We are happy to be back before this committee and we know that when we address you, we are talking to people who are knowledgeable in the subject.

BUDGET AMENDMENT

I would like to say a couple of preliminary things. Normally, I do this in about 1 minute. With your indulgence, I would like to take about three this time. First of all, a formal matter. I would like to present to you, Mr. Chairman and to the committee, a budget amendment which involves $7.5 million in the "Salaries and expenses" account which has to do with education and training. Our budget request, as submitted, contained this amount of money for education and training. It was suggested by the Board of Directors of the Federal Judicial Center, which is the primary training agency, that the money should more appropriately appear in the center's budget.

The chief justice in his capacity as chairman of the Board of the center wrote a letter to you, Mr. Chairman, and to Chairman Smith making that request. In order to bring the entire judicial branch into conformity with that position, we are now submitting a counterpart amendment so that the judicial conference and the judicial center are now in accord with respect to that matter.

Senator HOLLINGS. In the fiscal year 1991 request, of course, that is the way we provided for it. It was under the "Salaries and expenses" account.

Judge ARNOLD. Yes, sir.

Senator HOLLINGS. We put it there, and then you all told Judge Blatt you didn't get the money, and we had to write him back and tell him, "You did get the money, you just do not know how to read a budget."

Then we got a letter from Chief Justice Rehnquist, "Change it around so everybody can be reading the same thing," and we appreciate that request, and we would be glad to read the budget for you any time.

Judge ARNOLD. I appreciate that. We may call on you for that service.

Senator HOLLINGS. You got him intimidated and said, "Do not ever talk to the chairman of the committee anymore because it seems like when you talk to him, instead of getting money, you do not get the money."

Judge ARNOLD. Mr. Chairman, I want to say that I encourage Judge Blatt to speak to the chairman of this committee at all times.

Senator HOLLINGS. I see. Is that what you did, Mr. Mecham?

Mr. MECHAM. I have talked to Judge Blatt, and I support him.

Senator HOLLINGS. Right. Go right ahead. We will not make a Federal case out of it. Go ahead.

Judge ARNOLD. Let me just give kind of a general statement here with respect to the size of this increase.

Before I do that, though, I want to say to this committee, because it contains Members of Congress, that we are very grateful for the pay increase. We appreciate it. Your employees in the judicial branch are much happier now than they used to be.

Senator BUMPERS. Judge, now, you are talking to a bunch of people who didn't get a pay increase but are taking the heat anyway.

Judge ARNOLD. Senator, if I had a vote, I would vote to give it to you as well.

I feel somewhat uncomfortable and a little bit distressed at appearing before you and asking you for an increase of this magnitude. I have made an effort as chairman of the Budget Committee of the conference to keep these increases within bounds, and it may not be of much comfort to you, but I take some pleasure in reporting to you that the increase would have been $120 million more had it not been for the action that my Budget Committee took last summer.

But by way of explanation, I would like to tell the committee that a great deal of this increase is driven by forces that we have no control over. The caseload is a major force, and that is completely involuntary on our part.

IMPACT OF NEW LEGISLATION

Another major force is actions taken by other branches of the Government. For example, in 1990, the Congress passed the Federal Judgeship Act, which we are very happy to have, but which has budgetary implications. We have to fund those judgeships, and those people require space and equipment, and that total cost is about $86 million, which is spread between 2 years.

There was also the Judicial Improvements Act of 1990, which increased juror fees from $30 a day to $40 a day. That is a mandatory item that has to be paid amounting to $11 million.

The Civil Justice Reform Act was enacted to encourage a reduction in the delay and expense of civil litigation, to try to get cases tried faster. That is a $17 million item.

The Federal Law Enforcement Pay Reform Act of 1990 has required us to raise probation officers' salaries by $9 million. And under the Federal Employee Pay Comparability Act, we are authorized to and we are following the lead of the executive branch in giving a geographic pay differential to employees in three high-cost locations at a cost of $19 million.

Finally, the Congress has authorized 200 more assistant U.S. attorneys to prosecute savings and loan and bank fraud, and that, we calculate, will cost the courts $5.5 million when those prosecutions come to court. In addition, there are actions of the executive branch that we cannot control. GSA has raised our rent by 16 percent, and that costs $44.6 million.

Well, I won't burden you with further detail. We have a detailed schedule of these changes that are imposed on us which we want to submit, but I just want to tell the committee that we come with a sense of misgiving at the request but also with a sense that we are doing what we are compelled to do.

Senator HOLLINGS. Can you list down now the ones that you do have control over?

Judge ARNOLD. Yes, sir, and they are limited. We can choose, for example, not to employ a certain number of new deputy clerks. We could do that. We could choose not to employ a certain number of new probation officers, but when you do that, you have a very serious impact on the administration of justice.

The probation officers, for example, are, in large part, charged with supervising offenders, people who are either charged with crime or who have been convicted and are on probation or who are on supervised release after serving a prison sentence, and the less attention that is given to supervision of those people, the more likely they are to get in additional trouble.

So when we come to you with a statement that our caseload requires *x* number of new deputy clerks or probation officers, as a technical matter of language it is not mandatory. I mean, the world would not end, nor would we violate a statute if we didn't hire them, but there would be very serious consequences for the administration of justice.

Senator HOLLINGS. How much does that amount to, the deputy clerks and probation officers?

Judge ARNOLD. I will get that number for you, Mr. Chairman.

[The information follows:]

DEPUTY CLERKS AND PROBATIONS OFFICERS

The fiscal year 1992 budget request includes an additional 254 clerks' office positions at $3,590,000 and 290 additional probation and pretrial positions at $7,140,000.

PREPARED STATEMENTS

Senator HOLLINGS. Thank you. Go right ahead. Does that complete it? We are going to put your statement in its entirety in the record.

Judge ARNOLD. I appreciate that.

[The statements follow:]

STATEMENT OF JUDGE RICHARD S. ARNOLD

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to present once again the Judiciary's budget request for the United States Courts of Appeals, District Courts, and related judicial services for fiscal year 1992.

Mr. Chairman, I am fortunate to have the assistance today of Judge K.K. Hall of West Virginia, a member of the United States Court of Appeals for the Fourth Circuit and of the Budget Committee of the Judicial Conference.

We are keenly aware that the nation is at war as we appear before you today. This fact must necessarily influence all of the Congress's fiscal decisions. We do not hesitate to entrust the Judiciary's funding needs to the good judgment of this Committee in these difficult times.

As I have stated at every opportunity, the Judiciary is very fortunate in the support it receives from the Chairman and members of this Committee. Our shared ideal of equal justice under law would be unattainable indeed if your Committee and the Congress had not recognized each year the increasing needs caused by our increasing workload. The Chief Justice in his 1990 Year-End Report of the Federal Judiciary expressed his appreciation for continued Congressional understanding of the fiscal needs of the courts. After remarking on the growth of the courts' budget, he noted with concern that "this increase has been necessitated by the demands of handling cases of increasing complexity and by an expansion of the non-adjudication duties that are either assigned to the courts or required for their operation." He noted that in addition to the traditional judicial functions, "the courts oversee a vast spectrum of programs ranging from pretrial services, to drug aftercare, to the development, installation, training and monitoring of the new and enhanced court automation system." Finally, the Chief Justice said that, "with our overall caseload continuing to multiply, the Judiciary will be facing a continued need for expansion of our budget."

The purpose of our presentation today is to explain in some detail what is happening in the courts which requires these continued expansions in our budget.

The courts are rapidly reaching the point at which increasing caseloads will overwhelm available judicial resources. Congress recently passed the Judicial Improvements Act of 1990, which includes the Civil Justice Reform Act of 1990, the Federal Judgeship Act of 1990, and the Federal Courts Study Committee Implementation Act of 1990. While this legislation recognizes the increasing workload of the Judiciary by providing for 85 new judgeships, it also increases the workload by mandating the implementation of civil justice expense and delay reduction plans, and further increases our budget needs by raising juror fees from $30 to $40 a day. Congress also enacted the Federal Law Enforcement Pay Reform Act and the Federal Employee Pay Comparability Act of 1990, both of which have a major effect on the Judiciary's budgets.

WORKLOAD GROWTH

To highlight some of the workload concerns that the Judiciary has had to address in preparing the fiscal year 1992 budget, the caseload statistics of the courts are most helpful. For the first time in 1990, the courts recorded over 1 million filings, including civil, criminal, bankruptcy, and appeals. Since 1980, cases commenced in the courts of appeals have increased over 76 percent from 23,181 to 40,893. Although terminations increased 78 percent over the same period, pending cases still remain high at 32,589, a 55 percent increase over 1980.

Increases in civil cases filed in the district courts, although not so dramatic, remain troublesome. During the 10 year period, filings increased from 171,074 to 217,013 per year, a 27 percent increase. Although terminations increased 31 percent, the pending caseload is now 241,512, a 27 percent increase over 1980.

Bankruptcy workload continues to grow faster than any other court activity. Filings increased from 363,627 in 1981 to 749,981 in 1990, an increase of 106 percent. During the same period, terminations increased 136 percent, but pending caseload remains high, 993,346 cases in 1990, an increase of 111 percent over 1981.

IMPACT OF VIOLENT CRIME AND DRUGS

While the increase in civil and bankruptcy filings can be traced in part to population growth, the litigious nature of society, and the state of the economy, the increase in criminal caseload stems mostly from understandable decisions of the Executive and Legislative Branches to heighten the Federal attack on crime.

Criminal filings increased 64 percent, from 29,387 cases in 1980 to 48,035 in 1990, terminations increased 56 percent, and pending cases increased from 15,211 to 36,131 over the same period, a 138 percent increase.

New drug cases continue to lead the increase in criminal filings, as Congress and the Department of Justice have focused resources on illegal drug activity. The Anti-Drug Abuse Act of 1988 added 70 inspectors and 435 border patrol agents for the Immigration and Naturalization Service and 244 agents for the Bureau of Alcohol, Tobacco and Firearms, with the latter agency growing by 700 agents since 1985. The emergency drug funding made available in the Department of Transportation Appropriations Act of November 1989 authorized 640 more Assistant U.S. Attorney positions.

Renewed emphasis on fraud cases spurred by the savings and loan scandal contributed to an 11 percent rise in fraud offenses involving lending institutions in 1990 over 1989. The Justice Department has reported the prosecution of 329 officials for fraud in 243 savings and loan failures since October 1988. If, as we expect, 200 new Assistant U.S. Attorneys come onboard in 1991, we estimate that some 700 more savings and loan cases will be prosecuted in 1992 alone.

As the Chief Justice indicated, not only is there an increase in the workload of the judges and clerks' staff, there is also a dramatic effect on other parts of the Judiciary, particularly probation and pretrial services, public defenders and Criminal Justice Act appointments, and petit jury and grand jury activity. Criminal workload especially has a direct bearing on these organizations and activities.

Our request this year represents an attempt to respond to the Judiciary's requirements for increased resources in fiscal year 1992 for each of these areas. With certain adjustments to base of a miscellaneous nature offset by reductions for nonrecurring items, the remaining adjustments to base for the Courts of Appeals, District Courts, and Other Judicial Services total $328,889,000, or 17 percent over the adjusted appropriation for fiscal year 1991, and make up seven major categories of expenditure. These uncontrollable items are primarily for new legislation ($75,500,000); annualization of pay costs for fiscal year 1991 and expected increases in cost of living, benefits, social security, and FERS and an extra compensable day in fiscal year 1992 ($78,500,000); annualization of positions approved in fiscal year 1991 for increased workload ($36 million), inflation, postage increases, and space rental and other related rate increases ($67,500,000); defender services ($51,500,000); jurors ($11,500,000); and court security ($9,500,000). The remainder of our requested increase is for program requirements and totals $156,058,000, or 8 percent over our fiscal year 1991 adjusted appropriation.

Our request is approximately $120 million below the estimates of increased needs given to my Committee by different elements of the Judiciary. The Judicial Conference Committee chairmen worked diligently with the Budget Committee to arrive at a minimum figure, just as we have done in prior years.

Details of the Judiciary's requirements beginning with the fiscal year 1991 supplemental and continuing with the fiscal year 1992 request are spelled out below.

FISCAL YEAR 1991 SUPPLEMENTALS

For fiscal year 1991, it is necessary for the Judiciary to submit proposed supplementals for the Courts of Appeals and District Courts totaling $75,650,000. These supplementals are required as a result of recently enacted legislation.

The sum of $5,600,000 is required for the salaries and benefits of judges. Public Law 101–520 granted a 3.6 percent pay raise for judges which became effective January 1991. The supplemental will provide for 100 percent of the Article III judges' pay raise (nine month provision) and 50 percent of the Article I judges' pay raise (nine month provision). Funds have also been included to support the increase in benefits necessitated by the increase in the wage base subject to Medicare taxes from $51,300 to $125,000.

Public Law 101–509 authorizes a geographical pay adjustment of eight percent for personnel working in the metropolitan areas of Los Angeles, San Francisco, and New York City. We have included $6,800,000 to support a similar pay adjustment authorized by the Judicial Conference (nine month provision).

The Judicial Improvements Act of 1990, Public Law 101–650, should have a significant impact on the Judiciary's operations during fiscal year 1991. Title I, the Civil Justice Reform Act of 1990, provides for the development and implementation of civil justice and delay reduction plans in the United States district courts. These plans will address the problems of cost and delay in civil litigation. The first year cost of this Act is estimated to be $5,200,000.

Title II of the Act is called the Federal Judgeship Act of 1990. A total of 85 additional judgeships are authorized, 11 in the courts of appeals and 74 in the district courts. During fiscal year 1991, we estimate that 20 of the 85 appointments will be made, representing seven judgeship work-years. The supplemental includes $52,450,000 for the new judgeships, $3,930,000 in recurring expenses, including $530,000 for court security, for the 20 judgeships expected to be filled in 1991 and $48,520,000 for non-recurring expenses. The non-recurring expenses will provide for the equipment, furniture, lawbooks, and space alterations of all 85 judgeships and are requested as a "no-year" fund, to remain available until expended.

Last, Title III (Federal Courts Study Committee Implementation Act of 1990), among other things, increases from $30 to $40 the daily fee paid to jurors. This increase was effective December 1, 1990, and will cost an additional $9 million in fiscal year 1991. However, considering the current projections of an appropriation balance of $3,400,000 in the Fees of Jurors account, we are requesting a supplemental of only $5,600,000.

Mr. Chairman, I would like to mention that our 1992 request was developed assuming approval of this entire supplemental request. A supplemental appropriation less than the amount requested will require an adjustment to the amount requested for 1992, especially as it pertains to the $48,520,000 in nonrecurring expenses for the new judgeships.

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES—FISCAL YEAR 1992 REQUEST

As in the past, our budget request for fiscal year 1992 represents the minimum increase necessary to keep pace with the growing workload of the courts. For the courts of appeals, district courts, and other judicial services, we are requesting $2,405,259,000 and funding for 26,471 positions, an increase of $478,547,000 and 1,384 positions over fiscal year 1991, as adjusted for the 1991 supplemental. These figures reflect our amendment transferring $7,500,000 of our request for training court personnel to the Federal Judicial Center as of the February 21, 1991 decision of the Judicial Conference.

INCREASED CASELOAD

During the year ending September 30, 1990, filings with the courts of the United States exceeded one million for the first time, specifically 1,055,897, including appeals, civil, criminal, and bankruptcy cases. Since 1980, civil filings have increased 27 percent, from 171,074 to 217,013 in 1990. Criminal filings during the same period increased from 29,387 to 48,035, a 64 percent increase. Appeals have also continued to grow, increasing 76 percent, from 23,180 to 40,893. Although the number of Article III judgeships in the courts of appeals and district courts remained the same during this five year period (731), enactment of the Federal Judgeship Act of 1990, which authorized 85 additional judgeships, will help alleviate the tremendous pressure this increasing caseload has had on the existing judicial officers. As noted above, we anticipate that some of these new judgeships will be filled during fiscal year 1991.

A dramatic increase in bankruptcy filings was experienced during fiscal year 1990. Petitions filed under the Bankruptcy Code rose to 749,956, a 14 percent increase above 1989 filings and an increase of 106 percent over 1981 filings of 363,627.

SALARIES AND EXPENSES

The Judiciary's fiscal year 1992 request for the Salaries and Expenses account within the Courts of Appeals and District Courts amounts to $2,057,195,000, an increase of $393,632,000 over fiscal year 1991. Of this increase, $256,475,000 is for uncontrollable adjustments to the appropriation base, $13,260,000 for additional positions of bankruptcy and magistrate judges and bankruptcy administrators, $90,215,000 in resources related to workload increases, $28,182,000 for improvements in services, and $5,500,000 for the savings and loan workload.

The Judiciary is proposing a new activity structure within this appropriation for fiscal year 1992. In 1987, four of our accounts (Salaries of Judges, Salaries of Supporting Personnel, Expenses of Operation and Maintenance of the Court, and Space and Facilities) were consolidated into one appropriation account titled "Salaries and Expenses." The old accounts became the new program activity structure for the new

Salaries and Expenses appropriation. The new activity structure will now consist of four programs: Courts of Appeals, District Courts, Bankruptcy Courts, and Probation/Pretrial. This structure will more accurately reflect the principal operational functions within the Judiciary and how we use our resources.

Adjustments to Base and Built-In Changes

We have included $6,490,000 in mandatory adjustments to base. This amount will support a reduction in the average number of Article III judgeship vacancies by 12 and an increase of 9 in the average number of senior or retired judges. Annualization of the salaries and expenses associated with the 1991 supplemental for the Federal Judgeship and the Civil Justice Reform Acts of 1990 amounts to $42,925,000 and 387 positions. This is offset by a reduction of $48,520,000 relating to the nonrecurring expenses of equipment, lawbooks, and building alterations included in the 1991 supplemental. As noted above, this base reduction is predicated on the assumption that the supplemental request will be approved.

The annualization of 1991 pay raises and other salary and benefit adjustments amounts to $37,360,000. An additional $36,290,000 has been included to annualize positions authorized in fiscal year 1991. We have also made provision for an anticipated January 1992 pay increase of 4.2 percent (3.7 percent for judges) and other 1992 salary and benefit adjustments, including geographic pay increases and pay adjustments for probation officers, totaling $74,415,000. Adjustments associated with inflation for services, supplies, and equipment amount to $21,185,000. An additional $20,900,000, offset by a reduction of $2,300,000 for non-recurring expenses from fiscal year 1991, is for furniture and furnishings for newly acquired space.

Mr. Chairman, our uncontrollable increases for space and facilities rental total $68,830,000. Most of this increase, of which $46,500,000 is due to inflation, relates principally to space rental payments billed by General Services Administration (GSA). We have been advised by GSA that our rental payments will increase by 16 percent in 1992. As you know, we have no control over changes in space rental rates charged by GSA.

Salaries of Judges

We are not, Mr. Chairman, requesting funding for any additional bankruptcy judges at this time. However, due to the continuing increase in the bankruptcy workload, we plan to recall three additional retired judges to assist the regular judges in 1992, which will cost $1 million, including their staff. In addition, we are requesting 10 additional staff positions at a cost of $470,000 for the bankruptcy administrators in the six districts within Alabama and North Carolina to contend with the increasing workload in those districts.

With regard to magistrate judges, we are requesting 9 additional full-time positions and the conversion of 12 part-time magistrate judges to full-time status. The locations for these positions have been recommended for the consideration of the Judicial Conference in March. In addition, funds have been included for seven additional recalled magistrate judges. With staff, the cost of these additional magistrate judges is $13,530,000. Three of these positions are required for the anticipated impact of the savings and loan cases.

Resources for Workload Increases

We are requesting a total of 112 positions for the circuit executives' offices (24), the Claims Court (1), and the central legal staffs (87) in the courts of appeals. The Ad Hoc Committee on Automation Staffing of the Judicial Conference Committee on Judicial Improvements recently completed a study and issued a report on staffing for PC-based systems. This report recommends that courts be provided with additional positions to support automation, including hardware and software support for the large number of personal computers in the courts. The 24 positions requested for circuit executives will allow for two computer support positions in each of the 12 circuit courts of appeals.

The automation capabilities of the Claims Court have increased dramatically in the past two years. To meet the demand for office automation support services, the Court is requesting one computer support position.

The current limitation on staff attorneys is one for every authorized circuit court of appeals judgeship and one additional staff attorney for each three additional judgeships which could be justified by workload. A Staff Attorney Study Committee was established to examine the workload of the staff attorneys and develop a new formula. The Committee concluded that an increase of 76 staff attorneys and 11 clerical positions is needed. This increase has been approved by the Judicial Conference. However, because the timing of filling the positions is indeterminate, no funding is requested for 1992.

CLERKS' OFFICE PERSONNEL

A total of 315 additional positions are requested for the clerks' offices in the courts of appeals, district courts, and bankruptcy courts: 189 deputy clerks associated with workload increases; 65 positions for automation support; 3 court interpreters; and 58 electronic court recording operators. Workload accounts for the two additional positions in the courts of appeals, a reduction of 21 positions in the district courts, an increase of 197 deputy clerks for bankruptcy courts, and 11 deputy clerks for the S&L workload. As noted earlier, bankruptcy filings continue to increase at an unprecedented pace, 14 percent greater in 1990 over 1989. We are projecting that bankruptcy filings will continue to increase at the rate of approximately 10 percent for both 1991 and 1992.

As noted above, the Ad Hoc Committee on Automation Staffing has recommended that additional positions be provided to support automation in the courts until the new work measurement formula is developed. In 1991 we were authorized 240 additional positions for PC automation support. Because the estimated number of personal computers will increase to 12,000 by 1992, an additional 65 computer support positions are requested, for a total of 305 positions.

Due to the documented needs within the Southern and Western Districts of Texas, the Judicial Conference has approved three additional full-time court interpreter positions. We expect that the cost of these positions will be partially offset by an expected reduction in contract interpreter services.

The electronic court recording program continues to expand among district judges and bankruptcy and magistrate judges. Twelve additional recorder operators will be required for district judges, the cost of which has been partially offset by the elimination of six official court reporter positions and a reduction in contractual reporter costs. Expansion of the program in bankruptcy courts will require 21 additional operator positions. This cost is totally offset by a reduction in contractual services. Magistrate judges will be provided with 25 additional recorder operators, the cost of these to be partially offset by the expected decrease in the need for contractual reporters.

PROBATION AND PRETRIAL SERVICES PERSONNEL

Mr. Chairman, the needs of the Probation and Pretrial Services Systems continue to increase. In addition to continuing increases in the regular client caseload, more resources are needed for the Sentencing Guidelines and home confinement efforts. A total of 223 new positions are requested for the regular workload of probation and pretrial officers, such as client supervision and presentence reports. The three major indices of the probation workload: (1) number of persons received for supervision during the course of a year, (2) the number of persons under supervision, and (3) the number of investigative reports prepared—continue to increase, and we do not foresee any decline in the near future.

Funding is also requested for an additional 27 probation positions to handle workload resulting from the Sentencing Guidelines. This increase brings to 623 the number of staff required for this purpose in fiscal year 1992 because of the increased complexity involved in preparing presentence reports. The Anti-Drug Abuse Act of 1988 permits home confinement as a condition of supervision in lieu of the more expensive alternative of imprisonment. In anticipation of further increases, bringing the home confinement caseload to 3,000 in fiscal year 1992, 40 more positions are required for this program, bringing the total to 127.

In addition to the staffing needs of the probation and pretrial systems, we are requesting an additional $11,625,000 for contractual services as follows: an additional $4,250,000 for the drug dependent offenders program, bringing the total request in 1992 to $33 million; an additional $1,640,000 for the mental health treatment program, for a total of $2,390,000; a total of $12,250,000 for contractual services for the custody and/or care of persons on pretrial release, representing an increase of $3,980,000 for 1992; an increase of $1,500,000 for electronic monitoring services for a total requirement of $5.2 million; and last, an additional $205,000 to expand the student pretrial services project nationwide.

SPACE ALTERATIONS

The need for adequate facilities to house the expanding Judiciary continues to require significant funding for space alteration projects. Funds are requested for space alteration projects deferred in 1991, $17,150,000, and for other alteration projects to be accomplished in fiscal year 1992, $18,550,000. In addition, $32,545,000 is being requested to reimburse GSA for the Judiciary's share of prospectus projects. This share includes providing equivalent accommodations to current courthouse tenants, moving them, demolition of the old space, and Judiciary necessities such as a judge's bench, witness box, and jury boxes.

Improvements In Services

A number of items totaling $28,182,000 have been included in our budget request to provide for significant improvements in the courts. Of this total, $15,974,000 will allow for expansion of automated systems in the courts, bringing the Judiciary Automation Fund total to $106,794,000. An additional $1,623,000 for court automation support will provide an additional 28 reimbursable positions, bringing the total to 223 positions for purposes of installing and supporting the necessary systems. The systems requiring major resource increases in 1992 are the District Court Automation Project and the Appellate Information Management System. Other improvements in services are: $3 million for a one-time purchase of voice mail; $1.6 million for operating expenses of cellular telephones to be provided to Federal judicial officers by the U.S. Marshals Service; $1.6 million for operational training; and $1 million for facilities consultant services to be provided the courts when reviewing space layouts prepared by GSA staff and otherwise working on space alterations and prospectus projects.

DEFENDER SERVICES

Our request for funding of the Defender Services program amounts to $193,004,000 for fiscal year 1992, an increase of $60,243,000 over fiscal year 1991. These funds will be used to meet the demand for counsel and investigative, expert, and other services by indigent criminal defendants, and to continue support of death penalty resource centers. Felony and misdemeanor appointments under the Criminal Justice Act have increased each year since 1980, and these annual increases are expected to continue. A significant part of the increase, $21,500,000, is required to restore the base appropriation that was reduced by the carryover from 1990 into 1991 of that same amount.

Representation under the Criminal Justice Act in the circuit and district courts is expected to increase from an estimated 81,902 appointments in 1991 to 86,821 in 1992, an increase of six percent. Workload increases and other increases in the costs of operating the Federal public defender organizations will cost an additional $10,391,000 in fiscal year 1992. An additional $11,441,000 will be required for the expected increase in panel attorney and expert services payments in 1992. We have also included: $2,834,000 to increase attorney compensation rates by amounts not to exceed the aggregate of the Federal pay comparability adjustments since March 14, 1987; $1 million for additional death penalty resource centers; and $6,905,000 for alternative rates in those localities in which the Judicial Conference has determined that the need is critical to find competent attorneys.

FEES OF JURORS AND COMMISSIONERS

We are requesting $70 million in fiscal year 1992 for the payment of fees to jurors and land commissioners. The increase over 1991, $11,403,000, is attributable to an increase in juror utilization of approximately three percent ($1.8 million), annualization of the juror fee increase authorized by the Judicial Improvements Act of 1990 ($1.7 million), inflationary adjustments ($888,000), and the appropriation base restoration ($7 million) required as a result of a prior year unobligated balance used to offset 1991 obligations.

COURT SECURITY

We have included $85,060,000 to fund the Court Security program in fiscal year 1992, an increase of $13,269,000 over the amount available for 1991. Of this increase, over 70 percent is due to the annualization of 1991 pay and program changes and inflationary adjustments. For 1992 we are requesting 170 additional court security officers, of which 80 positions will provide a security presence at 21 new court facilities and 90 officers will be required for the expansion of court space and security system upgrades. For 1992 there will be a total of 2,151 court security officers.

CONCLUSION

Mr. Chairman and members of the Subcommittee, I would like to say once again that we are very grateful for the efforts all of you have made and that the Congress as a whole has made to keep the Federal Judiciary in a position to accomplish its mission.

On behalf of the Budget Committee of the Judicial Conference, we thank you and your Committee for your attention to our needs and for the many considerations with which you have favored us in the past. We are prepared to respond to questions and to any requests for additional information.

COMPARATIVE WORKLOAD DATA FISCAL YEARS 1980 AND 1990

[Data as of September 30, unless otherwise noted]

	Fiscal year—		Change
	1980	1990	
Court of appeals:			
Filings	23,181	40,893	76.4
Terminations	21,932	38,961	77.6
Pending	21,027	32,589	55.0
District courts:			
Civil cases:			
Filed	171,074	217,013	26.9
Terminated	163,869	214,435	30.9
Pending	190,448	241,512	26.8
Criminal cases:			
Filed	29,367	48,035	63.5
Terminated	28,606	44,570	55.8
Pending	15,211	36,131	137.5
Total:			
Filed	200,461	265,048	32.2
Terminated	192,475	259,005	34.6
Pending	205,659	277,643	35.0
Bankruptcy petitions:			
Filed	[1]363,627	749,956	106.2
Terminated	[1]269,544	637,118	136.4
Pending	[1]471,356	993,346	110.7
Magistrates:			
Criminal trial jurisdiction	[2]90,402	[2]100,930	11.6
Civil trial jurisdiction	[2]597	[2]4,958	730.5
Preliminary felony proceedings	[2]87,031	[2]167,382	92.3
Other criminal and civil matters	[2]104,414	[2]177,295	69.8
Probation:			
Received for supervision	30,870	38,825	25.8
Under supervision, year-end	63,361	79,848	26.0
Pre/post sentence investigations	[2]24,689	[2]43,498	76.2
Other:			
Petitions for naturalization	[2]150,646	[2]281,254	86.7
Aliens naturalized	[2]133,721	[2]266,578	99.4

[1] Fiscal year 1981.

[2] Data for the year ended June 30.

STATEMENT OF L. RALPH MECHAM

Thank you for the opportunity to appear before the subcommittee and present the 1992 budget for the Administrative Office of the United States Courts. Accompanying me is Raymond A. Karam, Assistant Director for Administration, and other members of my staff.

First, I would like to thank the members of the subcommittee for your help and support on our 1991 appropriation. Your willingness to recognize the important role of the Administrative Office in supporting a strong, effective Judiciary is greatly appreciated, and your efforts on our behalf have been the key to our ability to carry out our responsibilities.

Although the Congress generously funded 97 percent of the Administrative Office's budget request for 1991, we nevertheless find ourselves in a critical situation as we head toward the middle of the fiscal year, operating under severe fiscal constraints. This is primarily because last fall, Congress enacted The Judicial Improvements Act of 1990. This legislation creates major new work requirements, not only for the courts, but for the Administrative Office. It is not a workload for which we were able to budget in our 1991 request. The legislation was enacted at the end of the last session.

In response to this unexpected situation, I have placed strict limitations on funding for activities we anticipated performing in our 1991 request; restrictions on staffing, travel, training, contractual services, furniture, and equipment. These limitations will help us in meeting most of our workload requirements, but not entirely. The risk is that the courts may fail in some part of their mission for lack of critical services from the Administrative Office.

1991 SUPPLEMENTAL REQUEST

In this context, I will discuss the 1991 supplemental funding request of $2,450,000 proposed for the Administrative Office.

Implementation of Title I of the new legislation, The Civil Justice Reform Act of 1990, will require $1 million and seven additional personnel to assist with the development and implementation of the civil justice expense and delay reduction plans in the courts. This support includes assistance with work on docket assessments, model plans, and analysis of case management techniques and materials. In addition, contractual support will be required to assist in the development of procedures for Alternate Dispute Resolution and Differentiated Case Management as well as to review plans and meet legally mandated evaluation requirements.

An additional $1,450,000 is required to implement Title II, The Federal Judgeship Act of 1990. This title authorizes 85 new judgeships, of which 74 are expected to be filled in fiscal years 1991 and 1992. Historically, we have found we need one Administrative Office employee to service the administrative needs of every two judgeships and their staffs. Thus, the $1,450,000 will provide funding for the salaries, benefits, and related costs for 37 new employees to support the 74 new judgeships that we estimate will be filled in 1991 and 1992.

Both of these new laws have a major impact on the Judiciary. The Administrative Office has an essential role in assuring swift and smooth implementation of these legislative mandates, but we need sufficient resources if we are to do the job that is required.

GROWTH IN ADMINISTRATIVE OFFICE RESPONSIBILITIES

Continued resource shortages into 1992 will result in an unacceptable level of service to the courts. For 1992, we are requesting an increase of $11,750,000. It is called for by the following factors: (1) pay and benefits, space rental, and inflationary cost adjustments to our 1991 funding level; and (2) additional personnel and other requirements driven by program and workload increases related to new legislation and management initiatives.

As you know, the Administrative Office is called upon to provide more services as the Judiciary grows. When the Administrative Office was created in 1939, the bulk of its work consisted of delivering basic administrative services to the courts, such as payroll, budget, procurement, personnel, accounting, and statistics collection.

Today, in addition to those services, we provide complex legal, program, and automation support. The Administrative Office's important responsibilities for providing staff support to the Judicial Conference committees continue to grow. We estimate that this will require at least 70 staff years in 1991. Also, increases in the courts' workload and staff have resulted in increased demands on the Administrative Office. Total federal caseload for the 10-year period of 1980–1990 increased by 101 percent, including a 32 percent increase in district court filings, a 76 percent increase in filings in the courts of appeals, and a 150 percent increase in bankruptcy filings. This requires not only more administrative support for additional court personnel, but creates work for our program divisions.

For example, interdiction of illegal drugs has been a priority of federal law enforcement throughout the 1980's and into the 1990's. Between 1980 and 1990, criminal drug filings in the district courts increased 303 percent. In 1992, the Administrative Office will spend an estimated $4.5 million on drug related activities, an increase of $1.9 million or 73 percent from only two years ago in 1990. A congressionally mandated drug testing pilot project for federal defendants in 8 districts and a drug abuse treatment program for an estimated 19,000 people on probation are both managed by our Probation Division. In addition, the number of pretrial and probation personnel in the courts has grown to meet the needs imposed by the growing criminal caseload and by legislative mandates in areas such as sentencing guidelines. The number of persons under supervision increased by 26 percent, or 16,487 defendants, between 1980 and 1990. Our Probation Division now supports over 5,800 positions in the courts.

Similarly, our Defender Services Division now oversees 44 Federal Defender offices and 17 death penalty resource centers. In the bankruptcy area, the Administrative Office's Bankruptcy Division has been facing a situation in which the strain on the bankruptcy courts has grown tremendously. Between 1981 and 1990, there has been a 111 percent increase in the number of pending bankruptcy petitions, and an increase in caseload per bankruptcy judge from 1,559 to 3,349.

STAFFING

However, as I brought to your attention last year, the size of the Administrative Office staff declined steadily relative to the growth of the Judiciary during the 1980's, and this trend is continuing in the 1990's. For example, the Administrative Office staff represented about 3.5 percent of the total Judiciary staff in 1982. This is projected to drop to 2.4 percent in 1992, a 31 percent decrease (Exhibit A). The ratio of court employees serviced by Administrative Office employees is projected to be 41:1 in 1992, up from 29:1 in 1982, an increase of 41 percent (Exhibit B). These figures do not include the reimbursable positions in the Administrative Office, which are dedicated to the task of automating the courts.

The Federal Court Study Committee report, issued April 2, 1990, recommended the following:

> "Congress should increase funding for the Administrative Office. Increases in the federal judicial workload, and in statutory responsibilities, have created in turn a dramatic increase in the Administrative Office's workload and responsibilities. The funding and personnel available to the Administrative Office, however, have not kept pace with the rest of the judicial budget * * *. The Administrative Office's workload is also increasing in complexity * * *. The Office thus needs more senior professionals to accomplish more work with comparatively fewer resources."

This disparity in growth between the Judiciary and the Administrative Office is largely responsible for the increase requested for the Administrative Office in 1992. We simply can't keep up with the demands being placed on our staff, not only to provide administrative services to a growing court workforce, but to provide the high level professional, analytical, and management support the courts need to operate in an environment made increasingly complex by new legislative mandates.

ADMINISTRATIVE OFFICE SHARE OF JUDICIARY FUNDING

An $11,750,000 increase is essential to meet our 1992 staffing and program requirements. While this increase is slightly higher, in percentage terms, than the increase requested in the Salaries and Expenses appropriation, the Administrative Office share of total Judiciary funding remains at approximately two percent. In fact, the Administrative Office's share of the budget has dropped since 1982 from 2.9 percent to an estimated 2 percent, a decrease of 31 percent (Exhibit C). Most recently, the percentage increase in funding for the Judiciary between 1986 and 1992 has been almost one and three quarters times greater than the corresponding percentage increase in the Administrative Office. During that period, court funding increased 146 percent, while the Administrative Office increased by only 85 percent, from $28 million to $52 million.

MANAGEMENT GOALS

In putting together our 1992 budget request, I asked my staff to focus on long range goals as well as short term objectives. My primary goals continue to be (1) operating at peak efficiency at the least possible cost; (2) improving service performance and delivery; (3) modernizing both Administrative Office and court management systems and planning capabilities (including the installation of modern automated systems); (4) improving communication with judicial officers and staff; (5) decentralizing operating functions when appropriate; and (6) eliminating internal and external impediments to effective Administrative Office and court management. I believe the 1992 budget request reflects these management priorities. However, it is important to keep in mind that as greater discretion is given to the courts to handle certain administrative and operational functions, systems and controls need to be developed and put into place to assure that responsibilities are carried out properly. Oversight and audit of programs becomes more important, as do the provision of training and guidance.

The Administrative Office is currently in a transition period regarding implementation of our management priorities. Many initiatives are being undertaken that will decentralize administrative functions to the courts in areas such as budget, personnel, purchase of lawbooks for circuit libraries, and space. However, until the transition is complete, greater demands are placed on our resources. For example, my long term plan for personnel is to have the courts play a major role in monitoring the data base and in processing changes. However, until the courts can assume these functions, the Administrative Office must still process all the paperwork and maintain the data base while developing the systems needed to allow courts the necessary access, including planning the transition, developing the guidelines for court participation, evaluating the courts ability to carry out the new functions, programming the software applications and acquiring the hardware needed to implement the plan, and training the courts. This holds true for other decentralization initiatives as well.

In addition, such delegations of authority require the development of systems and controls to assure that congressionally mandated activities are carried out properly and that the courts are responsive to congressional concerns, especially with regard to quality of services and accountability for appropriated funds. The Administrative Office is required by statute to audit vouchers and accounts of the courts, and to carry out numerous other financial, budgeting, and oversight functions. Until the decentralization initiatives are fully implemented, there will be an increase, rather than a decrease, in the activities and related resource levels needed in the Administrative Office. However, I firmly believe this is the direction in which we must head.

Simultaneous to these efforts to decentralize administrative functions, I am building the professional analytical and management capabilities within the agency. These skills are increasingly important to successful support of the Judiciary. For example, I have expanded our capability to prepare judicial impact statements on a regular basis to assess the resource impact on the Judiciary of important legislative and executive branch proposals. These assessments have been an important tool in our planning and budgeting process.

With that in mind, I will explain in more detail the elements of our 1992 budget request.

1992 BUDGET REQUEST

The following is more specific detail about what is included in the 1992 budget request.

Adjustments to Base ($3,413,000)

The adjustments to base include $2,635,000 for pay raises, benefit increases, and other salary advancements; $953,000 for higher space rental costs and inflationary increases; and a decrease of $175,000 to transfer seven positions and related compensation funding to the Salaries and Expenses appropriation. These increases are essential if we are to maintain the same level of operations as in 1991.

In the past, the Administrative Office has had great difficulty attracting experienced court personnel and private sector individuals for hard-to-fill technical and other positions, due to cumbersome, time consuming, and restrictive Executive Branch civil personnel system regulations. Passage of Public Law 101–479, The Administrative Office of the United States Courts Personnel Act of 1990, provides the agency with the flexibility needed to enhance our recruitment capabilities, increase employee retention, and reduce the turnover rate in the agency. The legislation provides consistency with the courts' personnel management system and extends authorities for training and other developmental efforts. These changes enable the Administrative Office to compete for top quality personnel in skill-specific positions and to eliminate aspects of the former system that made it difficult to retain personnel.

The adjustments to our base funding level include the effect of an Executive Level pay increase that was given in order to keep Administrative Office executive staff salaries in line with pay rates assigned to the Senior Executive Service in the Executive Branch. Under the authority provided by the new personnel bill, I created an Administrative Office Executive Service modeled exactly on the six-level Senior Executive Service of the Executive Branch. The resultant pay increase is $220,000 higher than estimated in the 1991 budget, resulting in a need to adjust the 1992 base level. A similar adjustment was needed because 1991 space rental costs are $250,000 higher than estimated for 1991.

Implementation of New Legislation ($2,758,000)

The budget includes $1,258,000 directly related to The Judicial Improvements Act of 1990. As I explained earlier, Title I, The Civil Justice Reform Act, requires that each district court implement a civil justice expense and delay reduction plan. $568,000 is required to continue implementation of Title I in 1992, assuming the 1991 supplemental request is funded. The remaining $690,000 is required to annualize the positions needed to support the 74 new judgeships we estimated will be filled during 1991 and 1992, as authorized by Title II, The Federal Judgeship Act of 1990. The remaining 11 newly authorized judgeships are not projected to be filled until fiscal year 1993.

Title III of the Act mandates numerous changes to current court practices, as recommended by the Federal Courts Study Committee. Administrative Office personnel will be involved in the implementation of these changes, but we are not requesting additional funding tied directly to this workload.

Also included in our request is $1,500,000 associated with the Administrative Office personnel bill I described earlier. The funding increase is included in our budget request for personnel costs associated with a projected reduction in the agency's vacancy rate as a result of this legislation.

Other Workload and Program Increases ($5,579,000)

The $5,579,000 requested for program and workload increases includes $1,750,000 to fund 34 additional positions, $238,000 for program review and support functions, $105,000 for decentralization activities, $2,359,000 for automation activities, $827,000 for the move to the new building, and $300,000 for operational training efforts, as follows:

(1) *Program Division Workload Increases.*—Twelve positions are requested for program divisions that need to provide greater oversight and review in support of the courts and Judicial Conference committees. The Defender Services Division will be performing feasibility studies for new defender organizations and death penalty resource centers, as well as conducting on-site performance audits of existing organizations as criminal caseloads increase. More probation specialists are needed as the on-site drug testing and home confinement electronic monitoring projects grow. The Article III Judges Division should expand in order to meet the needs of the Article III bench for additional support services. Finally, the increasing demand for a higher level of Administrative Office staff Support for judicial Conference committees is evolving into the equivalent of full-time liaison positions.

An increase of $238,000 is needed for additional travel and contractual assistance to support these growing program review and support activities. More detail on these requirements is contained in our budget justification document.

(2) *Decentralization activities.*—Decentralization is the most far-reaching administrative undertaking in the Judiciary. It will change the nature of the relationship between the Administrative Office and the courts by giving the courts more flexibility to manage resources efficiently and better meet localized needs. It will also free Administrative Office personnel from performing many clerical type functions for the courts so that we can concentrate on the oversight and analytical tasks that are becoming an ever growing part of our mission. It is essential to staff adequately these efforts to ensure a successful transfer of decentralized functions to the courts.

In 1992, decentralization will be well underway in budget, procurement, and personnel. Phase I of budget decentralization includes 25 courts. Three positions are requested to provide court support on technical budgeting issues, review and analyze the status of the program, advise courts on potential problems and solutions, and reconcile differences between court and Administrative Office fund obligation records.

Procurement assistance to the courts will need to increase as the General Services Administration continues to delegate responsibility to additional courts for operation of court-occupied buildings. The costs of such operations are transferred from GSA, but the court personnel involved require additional help and training in order to accept these facility responsibilities. We also plan to continue to assist court staff in all aspects of procurements, including solicitation, negotiation, and award of contracts.

In the personnel area, we will be providing courts with electronic access to certain court personnel data currently maintained at the Administrative Office. This is the first step in operating a more decentralized personnel system within the courts, as I described earlier.

Successful implementation of decentralization in all areas depends upon adequate training, evaluation, and problem resolution by Administrative Office staff, on-site at the courts as well as from the Administrative Office. $105,000 is requested to fund contractual assistance and travel not provided for under the Salaries and Expenses appropriation.

(3) *Personnel initiatives.*—Four positions are requested for the personnel area. During 1991, we began a review of eleven courts to look at how they were carrying out administrative functions. The next phase of this review will begin in early 1992. It will expand beyond the eleven courts and include assessments of personnel classification system implementation, the recruitment process, time and attendance record keeping procedures, and an evaluation of personnel program effectiveness.

This type of review takes on increased importance because of our move toward more decentralization.

In addition, the new Administrative Office personnel system that I mentioned earlier will become operational in 1992. Additional personnel are essential to handle the documentation, training, and other activities that were formerly handled for us by the Office of Personnel Management.

(4) *Space and facilities.*—Over 35 major new construction projects have been authorized by Congress for 1991 and 1992, more than have ever been simultaneously underway in the history of the courts. The Administrative Office will be required to provide the technical expertise and advice essential to successful execution of these projects. Four additional positions are needed to ensure an adequate level of support for the courts.

(5) *Automation.*—Eleven new positions are required to provide adequate support and direction to rapidly expanding automation efforts. Three are needed in the program divisions to support programs such as the Felony Fine Center and the Probation and Pretrial Services Automation Case Tracking System (PACTS). Responsibilities include evaluating the systems in the courts, coordinating use of the resources, day-to-day operational support, oversight, and long range planning. Other divisions, such as Defender Services and Article III Judges Divisions, have defined automation requirements for their counterparts in the courts, but need the staff resources to develop and support specific program applications.

Five new positions are needed to address automation needs within the Administrative Office. The major automation effort in 1992 will be installation of the Data Communications Network, known as JURIST. The ultimate goal is an integrated and all inclusive automation system for the entire Judiciary, providing the means for users to access applications such as electronic docketing; financial management; jury, probation, and administrative systems; statistics; and dissemination of court information. Funding also is required to connect all Administrative Office employees to JURIST.

Three positions are requested to design, test, and document enhancements to the automated Court Financial System. This system is critical to budget decentralization efforts.

Additional funds are required to replace hardware that will have reached the end of its useful system life by 1992. There is minimum funding in 1991 for replacement of hardware, resulting in the need to replace that equipment reaching the end of its system life in 1991 as well as in 1992. This includes both office automation hardware and disk drives for our mainframe computer.

Finally, with the expansion of office automation in the Administrative Office, there has been an increase in the usage of computer based research services. It is expected that this trend will continue once the data communications network is operational.

(6) *Move to the New Judiciary Office Building.*—We are planning to move into the new Judiciary Office Building by October 1992. The move will consolidate judiciary support functions in Washington at one location. This will be a great improvement for the Administrative Office, which is currently located in 9 different buildings throughout downtown Washington. Our request for $827,000 is for the cost of planning and carrying out the move, as well as for furniture and equipment items that must be delivered or installed by the time of the scheduled move. These items are necessary to furnish or equip common areas in the building, such as equipment for the library, conference rooms, telephone equipment, power distribution units for the computer room, and other such items.

(7) *Operational training efforts.*—In conjunction with the Federal Judicial Center, we are planning a major operational training effort in 1992. This will include training in the areas of finance, budget, procurement, and personnel, as well as program specific training. Our request for $300,000 represents the Administrative Office share of the total cost to provide this training, mostly for travel for faculty. The majority of the training costs will be paid from the courts' appropriation.

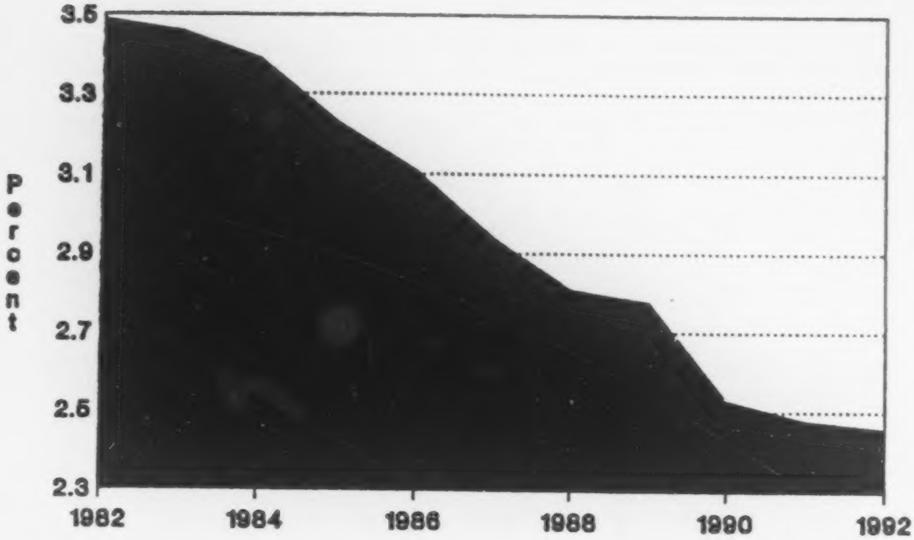
I thank you for this opportunity to describe our current status and resource requirements for fiscal years 1991 and 1992. In light of the imperative to reduce the federal deficit, I believe that our budget request for 1992 represents funding only for essential requirements. It is crucial that the Judiciary and, in turn, the Administrative Office have adequate resources to meet escalating demands. I must emphasize that the Administrative Office requires a level of funding sufficient to support the personnel resources necessary to provide an acceptable level of service as well as to keep pace with changes in legislation and technology. I feel confident that we can meet these challenges in a manner that makes the most efficient use of the resources available to us.

Again, thank you Mr. Chairman for the opportunity to present the Administrative Office budget request for 1992. I would be pleased to answer any questions that you might have.

Exhibit A

AO Positions

As a Percent of Judiciary Positions

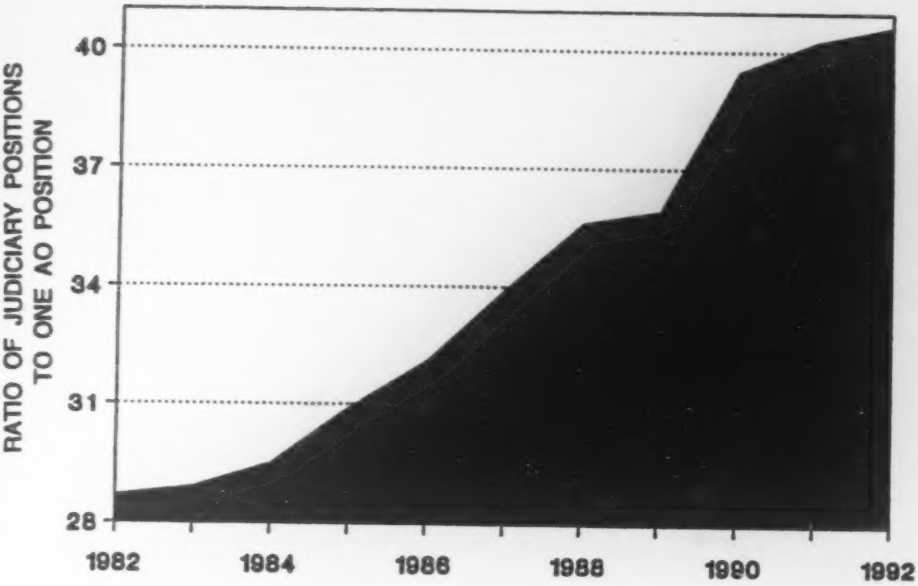


Footnote:

This graph represents only permanent authorized positions. These reimbursable positions funded by the Salaries and Expenses Account and dedicated to the task of automating the courts, are not included.

Exhibit B

Judiciary/AO Position Ratio

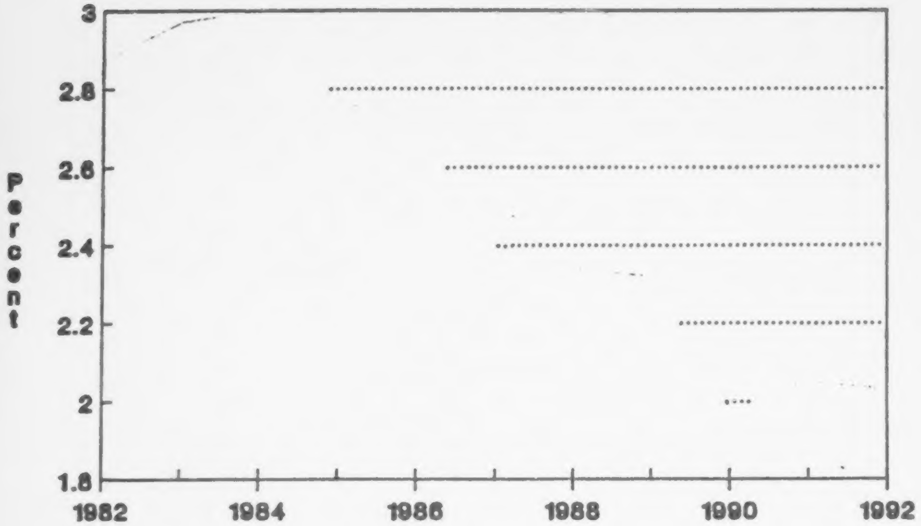


Footnote:

This graph represents only permanent authorized positions. Those reimbursable positions funded by the Salaries and Expenses Account and dedicated to the task of automating the courts, are not included.

Exhibit C

AO Budget Authority
As a Percent of Judiciary BA



LETTER FROM L. RALPH MECHAM

FEBRUARY 26, 1991.

Honorable ERNEST F. HOLLINGS,
Chairman, Subcommittee on Commerce, Justice, State and Judiciary, Committee on Appropriations, United States Senate, 125 Russell Senate Office Building Washington, DC.

DEAR MR. CHAIRMAN: I am submitting for the consideration of your Subcommittee a proposed amendment to the Judiciary budget for fiscal year 1992. The purpose of this amendment is to reduce the fiscal year 1992 request for Salaries and Expenses appropriation within the Courts of Appeals, District Courts, and Other Judicial Services by $7.5 million related to training requirements and to increase the fiscal year 1992 request for the Federal Judicial Center by the same amount.

The Federal Judicial Center Board concluded at the January 1991 meeting that it would be more appropriate for the Federal Judicial Center training funds to be included in the Federal Judicial Center appropriation rather than in the Salaries and Expenses appropriation of the Courts of Appeals, District Courts, and Other Judicial Services. The proposal was submitted to and approved by the Judicial Conference on February 21, 1991.

The reduction to the Salaries and Expenses fiscal year 1992 request of $7.5 million includes $1.1 million in the 1991 appropriation base and $6.4 million of the requested $8 million increase for operational training for fiscal year 1992.

I have enclosed revised schedules from the justifications for Salaries and Expenses and the Federal Judicial Center which reflect the adjustments.

I hope that your Subcommittee will look favorably upon this request. Let me stress that this request is made to accommodate operational and administrative needs of the judicial branch. I ask that nothing in it be permitted to prejudice the appropriation—the judicial branch very much needs the education and training that would be provided with the funds involved and is prepared to structure its request in whatever way Congress considers most appropriate to achieve that objective.

Please call me if you have any questions.
Sincerely,

L. RALPH MECHAM,
Director.

THE JUDICIARY—FISCAL YEAR 1992 PROPOSED AMENDMENT

	1992 request pending	1992 proposed amendment	1992 revised request
Courts of Appeals, District Courts, and Other Judicial Services:			
Salaries and expenses	$2,064,695,000	–$7,500,000	$2,057,195,000
Federal Judicial Center: Salaries and expenses	20,440,000	7,500,000	27,940,000

This proposal would reduce the funding for the Salaries and Expenses appropriation within the Courts of Appeals, District Courts, and Other Judicial Services and increase the funding for the Salaries and Expenses appropriation within the Federal Judicial Center in the amount of $7,500,000 for training costs. This proposal would not change the Judiciary's outlays in fiscal year 1992.

THE JUDICIARY

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

Summary of requirements

Appropriation 1991 (enacted to date)	$1,589,124,000
Transfer from fees of jurors and commissioners	4,919,000
Proposed supplemental	69,520,000
Budget authority, 1991	1,663,563,000
1992 budget estimate	2,057,195,000
Proposed increase	393,632,000

APPROPRIATION LANGUAGE

COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES

SALARIES AND EXPENSES

For the salaries of circuit and district judges (including judges of the territorial courts of the United States), justices and judges retired from office or from regular active service, judges of the Claims Court, bankruptcy judges, [magistrates] *magistrate judges*, and all other officers and employees of the Federal Judiciary not otherwise specifically provided for, and necessary expenses of the courts, as authorized by law, [$1,589,124,000] *$2,057,195,000* (including the purchase of firearms and ammunition); of which not to exceed [$61,045,000] *$128,893,000* shall remain available until expended for space alteration projects; and of which $500,000 is to remain available until expended for acquisition of books, periodicals, and newspapers, and all other legal reference materials, including subscriptions; and for expenses of the Claims Court associated with processing cases under the National Childhood Vaccine Injury Act of 1986, not to exceed [$1,500,000] *$2,500,000* to be appropriated from the Vaccine Injury Compensation Trust Fund, as authorized by section 6601 of the Omnibus Budget Reconciliation Act of 1989.

SALARIES AND EXPENSES—FISCAL YEAR 1992

[Dollar amounts in thousands]

	1992 request	
	Permanent positions	Amount
Summary of changes:		
Appropriation 1991 (enacted to date)	23,959	$1,589,124
Transfer from fees of jurors and commissioners		4,919

SALARIES AND EXPENSES—FISCAL YEAR 1992—Continued

[Dollar amounts in thousands]

	1992 request	
	Permanent positions	Amount
Proposed supplemental (includes $48.520 million in nonrecurring expenses)	329	69,520
Budget authority, 1991	24,288	1,663,563
Adjustments to base and built-in changes:		
Transfer of funds for training to the "Federal Judicial Center"		(1,100)
Mandatory increases for judges:		
Reduction in vacancy rate for active judges		1,700
Senior judges and supporting personnel	22	4,790
Annualization of proposed supplemental for fiscal year 1991:		
Federal Judgeship Act of 1990:		
Annualization of new judgeships	314	30,795
Nonrecurring expenses authorized in 1991 supplemental		(48,520)
Civil Justice Reform Act of 1990:		
Annualization of fiscal year 1991 costs		5,085
Additional requirements in fiscal year 1992	73	7,045
Annualization of fiscal year 1991 pay cost increases and other adjustments:		
Judges		13,000
Executive level pay plan		910
Supporting personnel		21,050
Annualization of fiscal year 1991 health benefits costs		2,400
Annualization of positions authorized in 1991		36,290
1992 pay cost increases and other adjustments:		
Pay cost increase for judges		6,000
Pay cost increase for supporting personnel		25,500
Cost of within-grade and other salary advancements, such as reclassification and geographic rates		21,800
Cost of pay adjustments for probation officers, Federal Law Enforcement Pay Reform Act of 1990		8,900
Extra compensable day in fiscal year 1992		3,005
Increase in fiscal year 1992 health benefits costs		3,550
Increase in fiscal year 1992 Social Security costs		2,200
Federal Employees Retirement System [FERS]		3,000
Increase in workers' compensation payments in fiscal year 1992		460
Adjustments for court operations:		
Furniture and furnishings required for new space		20,900
Postage increase for rate and volume		7,360
Increases in contract rates and charges for services, supplies and equipment (inflation)		13,825
Nonrecurring expenses authorized in fiscal year 1991		(2,300)
Reimbursable space and facilities expenses:		
Annualization of space assigned in fiscal year 1991		16,045
Increase in space rental costs and building related services and equipment (inflation)		46,500
Rental of space delivered in fiscal year 1992		6,285
Subtotal	409	256,475
Salaries of judges:		
Additional positions for judges:		
Regular magistrate judge positions (18), supporting personnel, and other adjustments	86	9,690
Recalled magistrate judge positions (7) and supporting personnel		2,100
Recalled bankruptcy judges (3) and supporting personnel		1,000
Bankruptcy administrators	10	470
Subtotal	96	13,260
Resources for workload increases:		
Additional personnel for:		
Circuit executives	24	1,105
Claims court	1	40

SALARIES AND EXPENSES—FISCAL YEAR 1992—Continued

[Dollar amounts in thousands]

	1992 request	
	Permanent positions	Amount
Staff attorneys	87	....
Clerks office personnel:		
Deputy clerks	178	2,305
Automation support	65	960
Court interpreters	3	220
Probation and pretrial services personnel:		
Workload increase	150	2,975
Sentencing guidelines	27	535
Home confinement	40	730
National court library system	6	235
Electronic court recording program	58	1,240
Additional funding for space and facilities:		
Space alterations to be accomplished in fiscal year 1992	....	18,550
Space alterations deferred in fiscal year 1991	....	17,150
Reimbursable costs of prospectus projects	....	32,545
Additional funding for probation and pretrial programs:		
Drug dependent offenders program	....	4,250
Mental health treatment program	....	1,640
Contractual support for pretrial services	....	3,980
Contractual support for electronic monitoring services	....	1,550
Contractual support for student pretrial services	....	205
Subtotal	639	90,215
Improvements in services and other charges:		
Relocation costs of displaced agencies	....	2,775
Facilities consultant services	....	1,000
Court automation:		
Expansion of automated systems	....	15,974
Court automation support	28	1,623
Training positions	12	180
Cellular telephone technology	....	1,600
Voice mail	....	3,000
Contractual financial audits	....	200
Operational training	....	1,600
Increase in costs of transcripts	....	230
Subtotal	40	28,182
Resources for S&L: Positions and support costs for the savings and loan workload	101	5,500
Total increases requested	1,285	393,632
Total appropriation requested, 1992	25,573	2,057,195

THE JUDICIARY

FEDERAL JUDICIAL CENTER

Summary of requirements

Appropriation 1991 (enacted to date)	$13,918,000
Proposed supplemental	1,633,000
Budget authority, 1991	15,551,000
1992 budget estimate	27,940,000
Proposed increase	12,389,000

Appropriation Language

Federal Judicial Center

SALARIES AND EXPENSES

For necessary expenses of the Federal Judicial Center, as authorized by Public Law 90–219, [$13,918,000] *$27,940,000, of which an amount not to exceed $5,000 is authorized for official reception and representation expenses.*

FEDERAL JUDICIAL CENTER—FISCAL YEAR 1992

[Dollar amounts in thousands]

	1992 request	
	Permanent positions	Amount
Summary of changes:		
Appropriation 1991 (enacted to date)	103	$13,918
Proposed supplemental	16	1,633
Budget authority, 1991	119	15,551
Adjustments to base and built-in changes:		
Transfer of training funds from Courts of Appeals, District Courts, and Other Judicial Services		+1,100
Annualization of fiscal year 1991 pay cost increases:		
Annualization of pay cost increases		+151
Annualization of 1991 health benefits costs		+7
Annualization of personnel costs in fiscal year 1991 supplemental		+400
1992 pay costs increases and other adjustments:		
Increase for fiscal year 1992 pay raise		+204
Cost of within-grade salary advancements		+97
Additional compensable day in fiscal year 1992		+25
Increase in fiscal year 1992 health benefits costs		+22
Increase in fiscal year 1992 Social Security costs		+34
Federal Employees Retirement System [FERS]		+61
Increase in postage rates		+35
Increase in lawbook costs		+2
Increase in space rental rates		+420
Increase in printing and reproduction costs		+11
Other increases in contract rates and charges for services, supplies and equipment		+297
Nonrecurring costs in fiscal year 1991 supplemental		–426
Subtotal		2,440
Resources for workload increases and improvements in services:		
Education and Training Division personnel	31	+1,478
Publications Division personnel	2	+65
Research Division personnel	1	+41
Innovations and Systems Development Division personnel	4	+199
Special Educational Services Division personnel	8	+299
General Administration Division personnel	1	+41
General Administration Division space rental and personnel support costs		+752
Media Center		+674
Other training		+6,400
Subtotal	47	+9,949
Total increases requested	47	+12,389
Total appropriation requested, 1992	166	27,940

Biographical Sketch of Richard S. Arnold

Judge Arnold was appointed United States Circuit Judge for the Eighth Circuit on February 20, 1980 and entered on duty March 7, 1980. He is a graduate of Yale

College, receiving a B.A. degree in 1957; and from Harvard Law School, receiving an LL.B. degree in 1960.

Prior to his appointment to the appellate bench, Judge Arnold served as United States District Judge for the Eastern and Western Districts of Arkansas, 1978–1980; as a delegate to the Seventh Arkansas Constitutional Convention, 1969–1970; as a member of the Board of Trustees, University of Arkansas, 1973–1974; as Legislative Secretary to the Governor of Arkansas, 1973–1974; and as Chief Legislative Assistant to Senator Dale Bumpers of Arkansas, 1975–1978. He was a member of the Ad Hoc Committee on Judicial Review Provisions in Regulatory Reform Legislation, 1981–1984, and of the Subcommittee on Judicial Improvements, 1984–1987. In 1987, he was appointed Chairman of the Budget Committee of the Judicial Conference.

Judge Arnold is married to the former Karen Sue Kelley and has two daughters: Janet Sheppard and Lydia Palmer. He is a member of the American Law Institute; the American Bar Association; the Arkansas Bar Association; and the Pulaski County Bar Association. He is a Fellow of the American Bar Foundation and a member of the Council of the American Law Institute.

BIOGRAPHICAL SKETCH OF KENNETH K. HALL

Judge Hall was appointed United States Circuit Judge for the Fourth Circuit on September 3, 1976 and entered on duty September 26, 1976. He received a J.D. degree from the West Virginia University College of Law in 1948. He was formerly Mayor of the City of Madison, 1949–1952; Judge of the 25th Judicial Circuit of West Virginia, 1953–1969; and United States District Judge for the Southern District of West Virginia, 1971–1976.

Judge Hall is married to the former Geraldine Tabor and has a son, Kenneth K. Jr. He is a member of the American Bar Association, the West Virginia Bar Association, the West Virginia Judicial Association, the Kanawha County Bar Association and the West Virginia State Bar.

BIOGRAPHICAL SKETCH OF L. RALPH MECHAM

L. Ralph Mecham was appointed Director of the Administrative Office of the United States Courts on July 15, 1985 by the Supreme Court of the United States. He earned his B.S. degree with "highest honors" at the University of Utah, his J.D. degree at George Washington University and holds an M.P.A. from Harvard. He was awarded a congressional fellowship to Harvard in 1963 and a graduate fellowship by Harvard in 1965.

Mr. Mecham serves on the Board of Directors of the Federal Judicial Center. He is an ex officio member of the Executive Committee of the Judicial Conference of the United States, as well as a member of the Executive Committee's Legislative Liaison Group. He is a member of the Judicial Fellows Commission; a member of the House of Delegates of the American Bar Association; and is liaison to the Administrative Conference of the United States.

Prior to his appointment as Director of the Administrative Office, Mr. Mecham began his Washington career serving as an administrative assistant and counsel to a United States senator from Utah. After more than 13 years in Washington, he returned to Utah for four years serving as vice president of the University of Utah and also served as dean of continuing education programs, and taught constitutional law among other duties. He founded the University of Utah Research Park.

Later, Mr. Mecham returned to Washington, D.C., where he was Special Assistant to the Secretary of Commerce for Regional Economic Coordination, as well as Co-chairman of the Four Corners Regional Economic Development Commission, a presidential appointment which required Senate confirmation. After his Commission work, Mr. Mecham became vice president in charge of federal government relations for The Anaconda Company until it was acquired by The Atlantic Richfield Company. He then served as Washington representative for The Atlantic Richfield Company until he accepted the Administrative Office directorship.

Mr. Mecham is married to the former Barbara Folsom and has five children. He is a member of the Utah and District of Columbia Bar Associations. He served for 11 years on the University of Utah National Advisory Committee, most recently as Chairman and is active in charitable and church service.

NEW JUDGESHIPS

Senator HOLLINGS. That concludes your statement now?

Judge ARNOLD. It does, sir.

Senator HOLLINGS. Asking then about these new judges. As I understand it, there are 43 existing vacancies. As it is, we are going to have to pinch every way we can, as you know, on this subcommittee, in order to meet the needs of the courts. Would it be in order to hold up on some of the money for the new judgeships? We have got 43 vacancies right now and to add 20 more, I do not know whether we can provide for them or not.

Do you have any observation about that? The whole 85 is what I am talking about.

Judge ARNOLD. I do have. That 85 is divided roughly between a $53 million item that we are requesting in the supplemental and then the remainder of it in the fiscal year 1992 request.

The question that arises is: Why are we asking in the supplemental for all of the money for all of the space and equipment for all 85 judges when we estimate that only 20 of them will be appointed in fiscal year 1991?

That is a fair question and the answer is this: That money for space and equipment in the first place would be no-year money if our request is granted, so it wouldn't all have to be spent in 1991.

In the past, the GSA and the OMB have not done advance planning for judgeships. They have not moved an inch to accommodate the space needs of new judges until the judge is appointed. But recently, they have changed that policy, and they are now participating in advance planning with us. If we can get the money and get the projects going and get those facilities built closer to the time that the judges are appointed, we think we can reduce the average time for getting those judges into permanent facilities from 7 years down to 5 years.

That will produce a great increase in efficiency and will also reduce the cost of rental of interim facilities that they have to occupy in the meantime.

CIVIL DISPOSITION TIME

Senator HOLLINGS. With respect to the civil caseload and reducing the processing of these civil cases, what is the goal for reducing the time of consideration, the disposition of civil cases? We are really backed up.

Judge ARNOLD. The goal is set by statute at 18 months—that is to say, that every case be tried within 18 months after it is filed.

Senator HOLLINGS. And you are on course?

Judge ARNOLD. We are on course. I may say to you that the median disposition time now is 9 months.

Senator HOLLINGS. Nine months, one-half that time.

Judge ARNOLD. So we think that is a pretty good number, but——

Senator BUMPERS. Judge Arnold, how does that compare with the past? Is that a significant improvement?

Judge ARNOLD. No; it has been pretty constant.

Senator BUMPERS. Has it?

Senator HOLLINGS. That would have to be a significant improvement from what we used to go through. They would put them off for 1 year, 2 years, couldn't find the witnesses.

Judge ARNOLD. There are cases that get put off, and there are cases that take more than 18 months to get to trial, but the median time is 9 months.

JUDICIARY AUTOMATION

Senator HOLLINGS. The 5-year automation plan in last years budget showed a requirement of $101 million for 1992 and $72 million for 1993. Now, the current submission is $105 million for 1992 and $112 million; it goes up in 1993. What has happened? Why does that increase in that dramatic fashion?

Judge ARNOLD. I spent some time, Mr. Chairman, going over that matter with our automation people. The short answer is that the earlier estimate was soft.

Senator HOLLINGS. I see.

Judge ARNOLD. There are specific reasons, however, for the difference in the numbers. In the first place, we are delivering that equipment faster than we thought we would. The caseloads are up, and especially in the bankruptcy courts, where automation is very important.

I might say, Mr. Chairman, that for the first time since 1990, we have over 1 million cases filed in the Federal courts, and the bulk of that increase is in bankruptcy, where automation, in terms of sending out notices, is very important. So that is, I hope, a thumbnail sketch of what is happening here.

FACILITIES FOR NEW JUDGES

Senator HOLLINGS. I am reminded here, when you talk about the different judges, that there is a rule of thumb allowance of tenant alterations of $105,000 for the court of appeal judges and $262,000 for the district judges.

Using that rule of thumb, we did work it out with the staff here of 11 appeal judges at $105,000 and 74 district judges at $262,000 for a total of $20,580,000, but the request is for $35 million. Clear the committee up on that disparity.

Judge ARNOLD. Mr. Chairman, I am not familiar with the average numbers for building chambers that you refer to. I will have to get more properly up to speed on that. But I can explain, I think, where the $35 million comes from for space.

We have gone out and surveyed each site where we think a new district judge will be located. It is not possible yet to survey the sites of the new circuit judges, because we do not know their location. We do not even know what State they would come from. But we, first of all, have set to one side those judgeships for which we do not think there will be any new space requirement, and there are nine of them, I am told; the space is already there.

There are other judgeships for which space has already been approved. For example, buildings are being built that GSA has approved and the Congress has funded, and there will be room there for some of the judges, but of the 74 district judgeships, we estimate that 33 of them will require a new courtroom and a new chambers. We are assuming, also, that the 11 new circuit judgeships will require both a resident and a nonresident chambers.

The new construction, we estimate, will cost $25.6 million. Now, the remaining $9.4 million is attributable to interim facilities. We think that the 11 circuit judges and 49 of the 74 district judges are going to need a place to stay and to work in the interim before their chambers can be fully outfitted. So those two numbers add up to $35 million.

I would like to have your leave, sir, to investigate further with my people the individual per judge numbers that you mentioned, because I am not aware of those.

Senator HOLLINGS. Well, we look at the average penny, and I know that is probably GSA and not the court system. We, as you well know, got a new judicial center down in Charleston, SC—a wonderful facility—but they are insisting on putting some statue or work of art in it. The chief judge at that time was Judge Blatt, and he, in concurrence with the other judges, wrote the court system, GSA or whoever, and said he didn't think that was necessary, didn't know where they would put it. I mean, it looks good and everything out there. You do not need a work of art. It has been a year fight. They continue to hire an artist and want all kind of judgments made, and they want to spend money.

Senator BUMPERS. Who is "they" in this case?

Senator HOLLINGS. I guess it must be GSA.

Senator RUDMAN. I think there may be a statute on public buildings and arts that we are involved in.

Senator HOLLINGS. We can fix that statute along with the other statute on witness fees. We are going to start passing some laws around here that make sense, because you do not have to have a work of art. We need court facilities and justice.

Judge ARNOLD. Some of the district judges, Mr. Chairman, refer to the courts of appeals as art critics. [Laughter.]

Judge HALL. That new Hollings Federal Building in Charleston is the best looking courthouse I have ever sat in.

Senator BUMPERS. Well, if that is the Hollings Federal Building, that puts an entirely new slant on all this. [Laughter.]

Senator HOLLINGS. It sure did, I can tell you that. [Laughter.]

They do not know where to put art. I will never forget the artist that was retained for the court facility there in Atlanta. He was from California, and he thought Atlanta was on the Atlantic and got all kinds of pictures of fish and oceans and everything else like that for Atlanta—way up on the high and dry. I'll tell you, we got some real good ways to waste money. Thank you a lot.

Senator Rudman?

BANKRUPTCY CASELOAD

Senator RUDMAN. I have a few questions. One is just a very parochial one. I do not know if the full impact of what is happening in the Northeast is upon your administrative office, but we have been going back and forth on our banking situation up there. The figures are absolutely stunning. Your standard for assessing judgeship needs is based on a standard caseload of 1,800 to 2,000 filings per judgeship and 100 chapter 11 filings. Last year Judge Yacos, the only bankruptcy judge in the State of New Hampshire, had roughly

2,550 cases, and 175 chapter 11 cases. They are now projecting that he is going to have 3,500 cases this year with a corresponding increase in chapter 11 cases. From 1989 to 1990, the rate of increase in cases was 92 percent. Over the last 4 years the caseload has increased 419 percent.

Curiously, in the State of Maine, where they have two bankruptcy judges, had only 31 chapter 11 cases during 1990. Now, I have written and I have asked for some action, and I understand that there is a meeting of the judicial conference coming up to discuss bankruptcy standards. But I am going to tell you that it is not sufficient to simply call for relief from judges in the State of Maine. You have got serious problems up there. You are going to have a terrible clogging of the judicial system. I just hope you address it.

You have a letter from me. I am not asking for an answer here this morning. I am just asking for you to look at a situation that is very serious, and made unique by the only bankruptcy of a public utility since the depression. We have got one judge. Talk about justice being clogged up, it is a serious problem. I hope people look very closely at that. I hope you will.

Mr. MECHAM. I would be happy to respond just briefly, if you would like.

Senator RUDMAN. Surely.

Mr. MECHAM. Judge Arnold and I have reviewed this matter. I have responded to your letter. You are quite right; the caseload went up 83 percent in 1 year. Obviously, the economic situation is not that good in New Hampshire or you wouldn't have that. We are aware of the tremendous load that Judge Yacos is carrying, and the judicial conference will be considering, through the Bankruptcy Committee and then the conference itself this particular matter.

Presently, it is clear that New Hampshire does meet the standard for a new judge. In candor, I will also tell you the Bankruptcy Committee is concerned that it might be a 1-year blip and it might go right down the next year.

Senator RUDMAN. I hope they are right. We will be happy to terminate the judgeship if that happens.

BANKRUPTCY JUDGESHIP BILL

Mr. MECHAM. As you know, there is also a judgeship bill for bankruptcy judges under consideration. I believe Senator Thurmond and Senator DeConcini are talking about putting one in. So my guess is wearing your other hat on the Judiciary Committee you will see an opportunity here.

Senator RUDMAN. I am not on that committee.

Mr. MECHAM. I thought you were on that committee.

Senator RUDMAN. A lot of people think I am, but I am not.

Mr. MECHAM. Well, you ought to be.

Senator RUDMAN. I am on five now. That is enough, thank you. I expect I would like to trade ethics for judiciary, but they will not let me.

But at any rate, that is my problem. I mean, the bill is starting down the pike and I would really like to follow the system. I do not like to jump over the system.

Unfortunately, the system that is working is a little slow in terms of when the Congress is going to move. I just may feel constrained to take these statistics to the committee and say that we have got an emergency situation up there, but I do not know what else we can do about it, but I put that on the table for what it is worth.

"NORIEGA" CASE

Let me go on to just some more general questions. The *Noriega* case raises kind of an interesting case study. His assets have been frozen, and we are advised by the administrative office that unless some additional accounts are freed, his trial could cost the Defender's Services Program $1.5 million. It seems to me that that is kind of a strange way to do things. Is there anything we can do about that?

Judge ARNOLD. Let me give you some information about the *Noriega* case, and then I will comment on your general question.

As you know, Senator, the United States and some other countries froze almost all of the money that he had. He had initially hired his own lawyers. I take it he hired them before his assets were frozen, but they have not been paid. We think that $1.7 million of the frozen assets are about to be released. That money will be applied to pay the lawyers for services rendered before they received an appointment under the Criminal Justice Act. That is being done by a special finding that has been made by the district court that that is appropriate.

We think that the trial will be completed by the end of 1991, and I should tell you that at the request of the district court trying that case, the Executive Committee of the judicial conference voted to pay the lawyers at a rate of $75 an hour. The ordinary rate is $40 out of court and $60 in court. The Executive Committee, acting for the conference, voted to raise that to $75 because of the complexity and the difficulty of the case. That rate will only apply to services rendered after January 24, which is when the Executive Committee took that vote.

We think that between now and the trial there will be about $703,000 expended on the case. This is not just lawyers; this is experts. For example, there is a graymail issue in the case, and they want to hire and the district court has approved the hiring of an expert on the Classified Information Procedures Act.

Then the trial, which we think will be from October to December, will be another $268,000. On top of that, there are expenses, travel, telephone, Xerox, and so forth.

Now, he has got another $4.2 million in frozen assets. This, of course, is up to the district court in that case, as to how to dispose of individual issues. It is our hope, speaking as the judicial branch, that some more of that money can be unfrozen and that if it is, it could reimburse the "Defender services" account for some of the tremendous expenditures.

But with regard to the amount of money being spent, I would just repeat for the record, I know the Senator is aware of this: Nothing is spent without the approval of the district court.

Senator RUDMAN. Right. I think that is a good answer, but let me ask generally—let's say you have a case where several million dollars have been forfeited. Under our laws, that goes into a forfeiture fund.

Judge ARNOLD. Yes, sir.

Senator RUDMAN. I think we have to take a look at the situation where a defendant who might otherwise be able to afford legal counsel, must use the resources of the defender program because his assets have been frozen. Perhaps we ought to reimburse the defender program. That is my point.

Judge ARNOLD. I would like to say, sir, that the judicial conference last March approved a legislative proposal to obtain for the judiciary a portion of the asset forfeiture fund.

Senator RUDMAN. For that purpose?

Judge ARNOLD. What we had in mind was using it for home confinement costs, because the Bureau of Prisons now gets a slice of that fund for incarceration costs and we thought, by analogy to that, it would be appropriate to use it for home confinement costs. The idea of using it to reimburse the "Defender services" account in cases where a public defender has had to be appointed because the person does not have the money to hire a lawyer by reason of the forfeiture proceedings, I think, is a good idea. I think we will be in accord with that.

Senator RUDMAN. We will look into that. I will talk to the people on the Judiciary Committee.

Senator BUMPERS. Senator Rudman, I sort of have an emergency. Would you yield to me 30 seconds, please?

Senator RUDMAN. I would be happy to yield as many to you as you would like.

GEOGRAPHICAL PAY INCREASES

Senator BUMPERS. I have a question. I am not sure whether I want to direct it to Judge Arnold or Mr. Mecham, but the question is: You have $10 million in here. You mention the geographic pay disparity that we do for San Francisco, New York, and Los Angeles. As I understand it, somebody has the authority to expand that. In other words, if you decide to give this to Miami and Atlanta and so on, there is $10 million in here to do that. My question is: Is it your office that has the authority to do this?

Mr. MECHAM. The action was taken by Executive order of the President to provide for an increase of up to 8 percent in three metropolitan districts, New York, San Francisco, and Los Angeles. The judiciary was then confronted with the fact that we are already having difficulty competing for professional help and assistance and what to do about it.

There was an emergency meeting of the Executive Committee of the judicial conference and the entire conference was told that the judiciary should follow the same steps that the executive branch took since our people are located in these three metropolitan areas as well, and so they elected to follow, as a matter of competition, to maintain the same quality of people and parity for the judiciary branch employees to give the same increase to the judicial branch employees that the executive branch had given in those three metropolitan statistical areas.

We do not feel we have the authority—at least I do not think we do—to extend that to other areas, but if the executive branch, operating under Executive authority conferred by Congress, elects to add other cities, say Chicago or Miami or Philadelphia or wherever, then we would then be confronted with the same dilemma we had with respect to those three. So that money is basically to pay for those three areas under the executive branch Act.

Senator **BUMPERS**. And $10 million is not going to be used to add other cities, then?

Mr. **MECHAM**. No; it would not.

Judge **ARNOLD**. Let me add one thing to that. The legal authority, I think, is in the judicial conference to make that decision, and they meet only twice a year. As a practical matter, between meetings, they act through the Executive Committee of the conference. That is where the action came to follow the lead of the executive branch in those three particular high-cost areas.

Senator **BUMPERS**. Well, you mentioned in your preliminary statements that this $10 million was going to meet these pay standards in these three locations.

Judge **ARNOLD**. Yes, sir.

Senator **BUMPERS**. What was that, again?

Judge **ARNOLD**. I think the number I gave was $6.8 million. I will find it in just a minute.

Mr. **MECHAM**. While Judge Arnold is looking, I have been corrected by staff. They indicated that money was also included in the judiciary branch request for locality pay increases where it is felt that it was justified beyond those three. So I was in error, and I misspoke. I just want to correct that.

Senator **BUMPERS**. That was my understanding.

Mr. **MECHAM**. You are correct.

Senator **BUMPERS**. Can you give us any insight as to what is to happen. The judicial council, Judge Arnold, is going to make this decision. Perhaps you could tell us what, if anything, has been discussed about this.

That is $10 million. You are only going to use $6 million to expand it to these three localities, and yet there is an additional $10 million in here to expand it to other cities.

Judge **ARNOLD**. Let me correct my number. The $6.8 million figure that I gave you is the amount for the geographic pay increase in the supplemental request for 1991. The amount that we have budgeted for 1992 is $19 million. I am not aware of any discussion as to expanding it——

Senator **BUMPERS**. Expanding the geographical area?

Judge **ARNOLD** [continuing]. Or as to specific locations to which it might be expanded. I am not a member of the conference nor of the Executive Committee. I suspect that my committee would be informed if they started to discuss this, but I am not aware that there has been any discussion up to now.

Mr. **MECHAM**. The Judicial Resources Committee of the judicial conference has discussed this. There have been proposals that may be before the judicial conference to extend this idea of locality pay to other areas. The problem we have, for example, take probation.

We find in certain areas where the State is paying higher dollars for equivalent work in State probation systems than is the Federal Government. We end up training the people to go on to the State government, and then we have to retrain people, and there are equivalent problems in certain other cities beyond these three, so I can add to what Judge Arnold said. There have been discussions, and it is possible that the conference could determine that in order to provide justice and maintain competition and parity in some of these other areas, the pay should be equalized.

Senator BUMPERS. But you would not do this unless the President extended it to other Executive pay areas. The President is the one who picked San Francisco, New York, and Los Angeles.

Mr. MECHAM. That is correct.

Senator BUMPERS. You decided to follow suit; am I correct?

Mr. MECHAM. That is true.

Senator BUMPERS. If the President expands to other locations like Miami, Chicago or wherever, would you feel compelled to also provide this same pay scale for your people in those areas?

Mr. MECHAM. The Executive Committee felt compelled with respect to those three areas. There was great worry and concern that there could be an expansion to areas that the judicial conference might not feel comfortable with, but my guess is that the same factors would be present if additional cities were added that were present for those three. I think they would almost have to do it. That is just my personal opinion, though.

Senator BUMPERS. Senator Rudman, I apologize, because this took longer than I thought it was going to, but, Mr. Chairman, let me just say that I am a little concerned about the sort of random way this is going to be done, although I agree with the principle. I agree with the principle that some of these people do need additional pay, but just to leave this money out on the table until the President decides whether we are going to spend it or not, that does not thrill me.

Senator HOLLINGS. Yes; we will have to control that. Thank you very much.

CIVIL JUSTICE REFORM

Senator RUDMAN. I have a few questions I will give you for the record. I was just curious on the civil justice expense and delay reduction plans. How many will be implemented by the end of this fiscal year and by the end of the next fiscal year?

Judge ARNOLD. We have $5.2 million in our supplemental request.

Senator RUDMAN. Right.

Judge ARNOLD. There are three categories of districts that are slated for implementation at the beginning of the program. There are 10 pilot districts that are to be selected by the conference. There are 5 demonstration districts that are in the statute, and there are early implementation districts, which is basically anybody else that wants in on it, and we think that 20 or 22 such districts will come into it this fiscal year.

Now, as to what amount will be implemented, by tomorrow, March 1, each district, including all 94, not just the early ones, is supposed to have appointed a committee to advise the district on the establishment of a plan for a delay and expense reduction. The committees are to include lawyers and nonlawyers and a reporter, like a law professor who would sort of summarize their deliberations and write a report for them.

Then the judicial conference, 2 weeks from now, will approve the 10 pilot districts. By December 31, the plans must not only be written, but actually implemented for those three groups of early districts. The remaining, I guess, 55 or whatever number it is, number of districts will be implemented later. But quite a lot of the activity is required by statute to take place this year.

Senator RUDMAN. I am glad to hear that. From what I hear from judges I talk to nationwide, this is a terrible problem.

FEES FOR PUBLIC ACCESS

A final couple of questions. Last year we authorized the establishment of fees for public access to case information through automated data processing equipment. Just briefly, how is that program coming along?

Judge ARNOLD. The program is off the ground on a pilot basis in bankruptcy courts, and we have established a kind of a rule of thumb that we would charge $1 a minute for people who call on a 900 number to get that information.

We call it PACER. I used to know what that stood for. I have forgotten. But it stands for something. I ask you to believe that it does. [Laughter.]

Senator RUDMAN. I am glad to hear that, because I think many of the acronyms in this city do not stand for anything; they are just out there.

Judge ARNOLD. There are five bankruptcy courts participating in that pilot program. They are in Texas, Massachusetts, Kansas, Oregon, and California, and we think that it will start in May 1991. That sort of summarizes that status.

Senator RUDMAN. Fine. I have got a few more questions, but I will submit them.

Senator KASTEN. Mr. Chairman, I do not have any questions for this witness, but I would ask if I can put a couple of questions in for the next witness, because I am not going to be able to be here to hear Ms. Janet Steiger.

Senator HOLLINGS. Very good. Surely.

Since you mentioned the *Noriega* case, why not just unfreeze him? I did not know you folks were involved in it. The United States is not a completely, let's say, guiltless party. He was on our payroll for illegal activities. There is an old saying that the best politician when he is bought stays bought. This fellow just does not stay bought. Now we have got him up here, and I do not care what the decision is in the next 10 minutes, there is a large body of public opinion in Latin America that the gringo did not give him a fair trial.

While we study these questions that due process have raised, we can send him back there for the prosecution of some real crimes—murder—in his own home, in his own bailiwick, and save us money, time, and everything else of that kind. So if you all are in there maneuvering around about unfreezing funds and how you are going to do all of this to ensure his fair treatment, let him get that down in Panama.

Judge ARNOLD. May I suggest, Mr. Chairman, that you put that question to the Attorney General?

Senator HOLLINGS. All right, sir. I will be glad to.

Judge ARNOLD. He is in charge of the prosecution, and he can drop it if he wants to.

ADMINISTRATIVE OFFICE REQUEST

Senator HOLLINGS. Well, we can study it. You know how we do. Everything is study. That is a wonderful word. Concern, that is another one. I am concerned, Mr. Mecham, that the AO functions are being decentralized to the courts, yet you have requested an increase of $11,750,000, a 29-percent increase over that amount, to include $51,600,000. How do we explain that?

Mr. MECHAM. Well, in several ways. First of all, the increase is not just for decentralization. That is a fairly minor part of it. We actually are facing, in fiscal year 1992, the implementation of the same laws, and in fiscal year 1991, that Judge Arnold talked about. Basically, it is statutorily driven. The Civil Justice Reform Act, we need funds for that; also, the Federal Judgeship Act. We find that when you add one new judge, we end up with about 38 supporting personnel to support as well.

So some of our increase would go to assist and help the judges and their personnel. We are also involved in the drug program; $4.5 million of our funding is for that, and we have had a 73-percent increase in our workload for drug testing, for drug abuse treatment, and so on.

We also have a new building that we are going to have the privilege of occupying, and we thank you for your support for that. We will be occupying that October 1 of next year. We have a lot of work to do to get ready for that. Our AO personnel bill which was passed, we have some additional costs that are there, for one thing, because we do not have to go through OPM any more. We will have and we expect to be able to retain our people better.

Our lapse rate is going to go down substantially, we feel. Currently the AO lapse rate is about 10 to 12 percent; each individual court is at about 1½, and the judiciary is 3 percent, so our lapse rate is tremendous. We feel that we will be able to reduce that and keep our people on board and do a better job.

I could enumerate other statutes that we are going to be implementing, but I will not go through all those details. As far as decentralization itself goes, a fairly modest amount of the increase will actually go to provide the support for that particular work. We feel that the money and resources ought to be out there with the courts, where they do the work, and our job is to support and sustain them.

Let me just give you one example of one area of the AO so you may catch a bit of a flavor of it. Take the Criminal Justice Act payments. We have seven positions in that area that handled 64,000 cases in 1987. We still have the same seven positions, but they are now handling 82,000, because we decentralized a substantial amount of the workload, so our staffing has not gone down, our expenditures have not gone down. We are doing a heck of lot more work because a lot of it is being done in the courts.

If we do not decentralize, we will probably be coming before you for about 212 new positions which we do not think is justified if we can put this work out where the people are. That would really do the job.

So yes, we are decentralizing. In the short run it is actually adding to our work rather than diminishing it. We hope, however, we will realize substantial economies. Certainly, we will realize them in the area of efficiency.

Senator HOLLINGS. Very well. Judge Hall, did you have any comments on any of these items this morning?

Judge HALL. I am very happy to be here. I think Judge Arnold and Mr. Mecham have presented our case very well. I have only been on this committee about 1 year and I have a new appreciation for the importance of your job.

Senator HOLLINGS. You just need to follow Judge Arnold. He does a wonderful job.

Judge ARNOLD. Thank you.

Judge HALL. I just follow him. I will be right here beside him.

Senator HOLLINGS. That is right. He goes around all the halls. [Laughter.]

Judge HALL. By the way, my good friends, the Kizers, from Charleston, WV, said to give you their regards. Their granddaughter, Caroline Bell, I believe, said you were at her wedding.

Senator HOLLINGS. That is right. I just got her husband a job. [Laughter.]

Judge HALL. I will have to tell them that.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Tell them they are all right. They are winners. Judge Arnold, we appreciate you, Judge Hall, and Mr. Mecham appearing here this morning. Thank you very much.

Judge ARNOLD. Thank you.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Judiciary Mandatories

QUESTION:

Only salaries of Supreme Court justices and judges of some federal courts are considered to be mandatory under the Budget Agreement. What other Judiciary programs would you define as mandatory?

ANSWER:

Since the workload of the Judiciary is largely uncontrollable in the sense that it is determined by the actions of the Department of Justice and civil litigants, a case can be made that all of the programs of the Judiciary should be defined as mandatory. Examples of programs for which the Judiciary has no discretion to determine whether or to what extent to perform these activities are, fees of jurors, defender services, and salaries of other judicial officers. Demand is solely a function of actions initiated by users of the court system and the need to assure citizen's constitutional rights.

For Fees of Jurors, the Constitution guarantees the right to a trial by jury, both in criminal (Sixth Amendment) and in civil (Seventh Amendment) cases. When the Administrative Office asked courts to consider suspension of civil jury trials on June 12, 1986, due to lack of funds to pay jurors, the U.S. Court of Appeals for the Ninth Circuit ruled that such a suspension violates the right to a jury trial provided by the Seventh Amendment.

For Defender Services, the Constitution guarantees the accused the assistance of counsel for his defense (Sixth Amendment). The Criminal Justice Act provides that the court shall appoint counsel for a person if that person is financially unable to obtain counsel and that appointed attorneys shall be compensated at a set rate. The statutory requirement to pay attorneys fees is not limited to the availability of appropriations.

Claims Court judges, bankruptcy judges, and magistrate judges all serve under constitutional and statutory authority. They have set terms of office and cannot be removed from office except for specific causes laid out in statute. The Judiciary has no discretion to suspend or terminate these judicial officers for lack of funds to pay them. Their salaries are tied by statute to those of Article III judges. If vacancies were not filled to save money, constitutional and statutory duties of the Judiciary would not be fulfilled.

QUESTION:

Have you approached OMB or the Budget Committees about labeling additional Judiciary accounts as "mandatory"?

ANSWER:

We have discussed our views on this with staff from both the House and Senate Budget Committees and with the director of the

Congressional Budget Office. We plan to approach OMB on this issue in the near future.

Furniture

QUESTION:

In FY 1992, you have requested $20,900,000 in furniture and furnishings for new space. Since the court personnel that are relocated into the new space already have furniture, why do you need new furniture?

ANSWER:

There are three basic reasons that new furniture is requested for personnel moving to new space. First, the number of employees authorized by the congress is increasing to allow the Judiciary to meet its workload. The new space that these employees are moved to often includes additional courtrooms, chambers, jury rooms, filing rooms, and waiting areas. Such expansion space requires new furnishings, such as carpeting, additional shelving, window treatments, waiting area furniture, file systems, etc. In addition, when new space is acquired, it is more economical to replace aged furniture at that time than to incur the cost of moving furniture that will need to be replaced in the near future.

Second, as the courts become more automated, existing furniture becomes obsolete, in that it will not adequately support PC's, printers, and other computer components. In addition, with the use of systems furniture to support automation efforts, we have found that more employees can be housed in less space. While the systems furniture may be more expensive, it does allow savings in the area of space rental.

Third, in many of the courts, furniture was provided with the original space and is now well used. In many cases it is in need of refurbishing or replacement. In some areas such as probation, the offices were originally furnished from surplus stocks. Rather than spend money to refurbish this old furniture, it is more cost effective to replace it with systems furniture that is more functional and saves space.

Home Confinement / Electronic Monitoring

QUESTION:

Your budget requests an increase of 40 positions at a cost of $730,000 and contractual support of $1,550,000 for the home confinement program.

-- How many individuals were detained in home confinement in FY 1991, and how many of these required electronic monitoring?

ANSWER:

The use of electronic monitoring as a means of enforcing home confinement has been fully operational in the 12 new pilot districts since October 1990. Since October 1, 1990, 347 persons have been referred to the program and 297 have been monitored. The difference of fifty in the number of referrals and actual persons monitored is reflective of parole cases that have been referred but not yet released to active supervision. The AO has no statistics on the number of persons being electronically monitored.

QUESTION:

Since it is two to three times more expensive to incarcerate a prisoner, could more funds be placed in the home detention program in FY 1992 in order to reduce overall detention costs? If so, how many individuals could you handle and at what cost?

ANSWER:

We have projected the maximum number of participants in all districts based on Sentencing Guidelines and parole release rules. Until there is a modification of the Guidelines, the pool of eligible participants is limited. We believe the funds requested for 1992 for this program are at the maximum we can practically use.

QUESTION:

In your opinion, should language be included in the Bureau of Prisons appropriation authorizing the transfer of funds to the Probation Service to fund additional home confinement in order to reduce overcrowding in our prisons?

ANSWER:

In my opinion, it is not necessary to change the language of the Bureau of Prisons appropriation act. Under the current authorization, the Bureau of Prisons is able to pay for a portion of the cases in the program. At this time, funds are available to provide for all of the participants that the program can handle. In addition, it appears that Sentencing Guidelines will have a large role in defining the number of potential program participants. Under the Guidelines, the majority of post-sentence participants are probationers, parolees, and persons on supervised release. Only five percent of the current participants are pre-release inmates but in their case, the Bureau of Prisons pays for the program.

As the program expands to all judicial districts we will have a better idea of whether or not this program might have an impact on the prison population.

Court Security

QUESTION:

My good friend, Judge Heflin has contacted me regarding a dispute between the Department of Justice and the Judiciary over who should pay the cost of "off-site" security for our judges.

> **-- Just what does "off-site" security entail and why does the Judicial Conference believe this is a responsibility of the U. S. Marshals Service?**

--What is the estimated cost of providing "off-site" security for all our judges?

ANSWER:

"Off-site" security refers to the safety of judicial officers after they have left judicial facilities. Under 28 U.S.C. 566(a) and 566(e)(1)(A) the U.S. Marshals Service is given statutory authority and responsibility for the security and safety of judicial officers. The Marshals Service has recommended a number of types of equipment that might be used to enhance judicial officers off-site security. These include cellular telephones, lifephones, remote car starters, and residential security systems.

The Marshals Service estimated the cost of this equipment to be:

Cellular phones @ $1,000 each	$ 1,700,000
Lifephones @ $540 each	918,000
Remote car starters @ $400 each	680,000
Residential security systems @ $8,000 each	13,600,000
Total	$16,898,000

These items are not in our budget request. We had understood that the Department of Justice would request them. Unfortunately, the Attorney General has not done so.

QUESTION:

Are special security precautions being taken in the courts as a result of the war in the Persian Gulf and the increased threat of terrorism?

ANSWER:

As of this date, there have been no specific threats against any member of the federal judiciary as a result of the Persian Gulf crisis. The Marshals Service is not currently providing any special personal security details for judges as a result of the Middle East situation.

The United States Marshals Service has enhanced the level of security at all judicial facilities. The enhancement procedures include the screening of all mail and parcels entering judicial facilities, as well as a more thorough screening of persons entering these buildings. As a result of the potential threat of terrorist activities in the United States, it has also been necessary to extend the hours of security coverage in some cases, requiring many facilities to have 24 hour coverage on a daily basis.

Space and Facilities

QUESTION:

The FY 1991 supplemental includes $35 million for tenant alterations to accommodate the 85 new judges approved by Congress in 1990. In calculating the cost of a new judge, the Administrative Office uses a "rule of thumb" allowance for tenant alterations of $105,000 for

court of appeals judges, and $262,500 for district judges. Using this rule of thumb, total tenant alteration costs for the 85 new judges would be:

11 Appeals Judges at $105,000 each =	**$ 1,155,000**
74 District Judges at $262,500 each=	**$ 19,425,000**
Total	**$ 20,580,000**

What is the source of the additional $14,420,000 included in the FY 1991 supplemental for tenant alterations for new judges? Is the money for support staff space?

ANSWER:

The difference is not for support staff. When the Administrative Office evaluated the facilities needs of the judgeships authorized in the Federal Judgeship Act of 1990, it conducted a survey of the probable locations of each of the newly authorized positions. As stated by Judge Arnold at the hearing, the results of the survey indicated that resident and non-resident chambers would be required for each of the circuit judgeships authorized, since it cannot be determined where a circuit judgeship will be located until a nominee is confirmed. Moreover, newly constructed permanent courtrooms and chambers would be required for 33 of the 74 district court judgeships authorized. Facilities for the remaining judgeships have either already been planned and budgeted for, or accommodations already are available in existing facilities to meet the judges' housing needs.

It was also assumed that 60 of the judgeships authorized would require interim facilities while permanent facilities were being constructed because replacement courtrooms and chambers would not be completed by the time the judgeship were filled. Interim facilities are needed because it can take anywhere from two to seven years to construct permanent facilities.

The estimates referenced at the hearing and in this question assume that, on the average, the General Services Administration will share the cost of constructing facilities. Those estimates did not include the cost of any interim facilities or non-resident chambers for circuit judgeships. It is GSA policy to provide "initial space alterations" when a Federal agency occupies space for the first time. Initial space alteration funds also are provided when space already assigned to an agency will be altered and the new space will be reclassified as a different "classification" of space. For example, if office space already assigned to the Judiciary is converted to a courtroom, the space classification would change from office space to "structurally changed" space. If the space classification does not change, the agency assigned to the space is responsible for all alteration costs.

Federal Property Management Regulations provide that GSA will make contributions for initial space alterations under the circumstances described above, but subject to the availability of GSA funds. In the case of the cost of facilities for judgeships included in the fiscal year 1991 supplemental, it was assumed that space already assigned to the Judiciary will have to be altered to accommodate the newly authorized judgeships. The Judiciary would be responsible for the total costs of all judges' chambers, because the current space classification probably would not change (GSA has classified chambers space as general office space). (Because GSA is not required to provide funding for initial space alterations even if the space classification changes (e.g. from office space to courtroom space), the estimates were based on a higher average cost.) It was assumed that the Judiciary would be required to pay for the total cost of meeting the judicial standards. The estimates include funds for the space and alteration requirements for judges' support staffs.

The supplemental estimate was derived by assuming the cost of constructing courtrooms and chambers for 33 of the district court judgeships at $600,000 per courtroom and chambers ($19.8 million); a total of $525,000 for both resident and non-resident chambers for the 11 circuit judgeships ($5.8 million); and that interim facilities would be required for 49 of the district court judgeships and the 11 circuit judgeships while the permanent facilities are under construction ($9.4 million). The funds required for interim facilities will pay for the rental of interim space ($5.4 million) as well as construction ($4.0 million).

QUESTION:

The costs of projects deferred in FY 1991 ($51,700,000) appears to be greater than the total FY 1991 request for new and deferred projects ($29,735,000). Could you clarify the relationship between the FY 1991 and FY 1992 budget space and facilities budget requests?

ANSWER:

Each year the Administrative Office prepares an annual space and facilities budget call which is distributed to each court of appeals, district court and bankruptcy court. The courts are asked to submit their requirements for both the upcoming fiscal year and the year for which the budget is being formulated (last year's call covered fiscal years 1991 and 1992). The circuit councils, pursuant to their statutory authorities to approve court accommodations, are responsible for reviewing the projects required by the courts. The space planning staff at the Administrative Office also reviews the projects submitted.

A comparison is made between what was originally submitted in the budget call and the revised estimates of the projects planned. Because of significant funding shortfalls in prior fiscal years, the Space and Facilities Committee of the Judicial Conference has determined that funding will be requested in the next budget request (e.g., FY 1992) to offset anticipated shortfalls in the current fiscal year (FY 1991).

Additional funds can be required as the upcoming fiscal year approaches due to changes in project schedules, unanticipated facilities requirements, which occur when, for example, a judge unexpectedly decides to take senior status and facilities will be required for either the judge or his replacement, or when significant staffing increases at a given location cause the need for new facilities in advance of the next budget cycle.

Another reason for the projected higher shortfall in 1991 is that actual construction contract award costs are exceeding the original budget estimates. The General Services Administration has the construction contracting authorities for court facilities and in many instances the actual cost estimates exceed those initially provided by GSA. Thus far in 1991, over $7 million that was not included in the 1991 budget has been required to reimburse GSA for prospectus level projects. These costs must be absorbed within available funding for space and facilities alterations; other projects are, therefore, deferred to future fiscal years.

QUESTION:

Why is the FY 1992 space and facilities request so much higher than the FY 1991 request?

ANSWER:

The space and facilities requirements are significantly higher than in FY 1991 because of a large influx of positions in FY 1989 - FY 1991, anticipated continuing increases in workload, current buildings are at full capacity, and GSA is now constructing many more court facilities than in the past.

The funds requested are needed to provide space for new positions authorized by the Congress in prior years, and to provide expansion capabilities, when needed, for the courts' long range housing needs. Between fiscal years 1989 and 1991 there was a 20 percent increase in personnel. Approximately 3,700 positions were authorized by the Congress for probation, pretrial services, clerk's offices, and other support staff. The ever increasing bankruptcy workload is having, and will more than likely continue to have, a significant impact on the facilities needs of the courts. In addition, most judges now take senior status when eligible, but still carry substantial caseloads. Additional facilities are required to house these judges or permanent replacements.

Most courthouses built in the 1930s served as both post office and courthouse buildings. The buildings have reached a point where they can no longer accommodate any growth in personnel. In some cases the addition of only a single senior judge can require the displacement of other court units and federal agencies in a building. The need for new facilities and the need to realign floors to be functional and secure once other tenants have moved from a facility, are the major factors contributing to the increased funds requested.

Until recently, relatively few new court facilities were being renovated or constructed. Since 1990, however, the Congress has authorized about 30 major renovation or new courthouse construction projects. In cases where new court houses have not yet been proposed by the General Services Administration, some court units, such as probation and bankruptcy, have been forced to move into private leased locations. The court space vacated by these units then needs to be realigned to accommodate other court expansion requirements, such as clerk's offices and newly appointed judges replacing those who have taken senior status.

Over the past ten or so years, relatively few new courthouses have been constructed, in spite of judgeship bills passed in 1978 and 1984. The General Services Administration has recognized the need for new judicial facilities and has estimated that $300 million has been committed to Judiciary projects in fiscal year 1991 alone. Between 1988 and 1991, GSA estimates that over $522 million has been spent on Judiciary related projects.

QUESTION:

The courts are developing long-range space and facilities plans for each of the 94 district courts. Do these plans take into account changes in operations, space, and storage needs that are expected from full implementation of the courts long-range automation plan? For example, will the advent of electronic filing and storage in the mid-1990s reduce the need for storage and file space, compared to present usage?

ANSWER:

Yes, the long-range space and facilities plans for the courts take into account the changes necessitated by automation efforts. The United States Courts Design Guide was updated and the changes approved by the Judicial Conference in March 1991. The Guide provides specific standards for the Judiciary's space and facilities program, including changing automation requirements. The automation requirements in the Guide were developed in consultation with various automation experts in the Administrative Office and the Federal Judicial Center. The Guide also will be updated as necessary to take into account changes in technology. Long range facilities plans provide overall projections of space needs. The actual attributes of space to be occupied, such as capability to store case files electronically and other automation requirements, are considered by the architect when designing each project. Whether automation will reduce the need for storage space for court documents, is a question that has not yet been answered.

QUESTION:

The Courts Long Range Automation Plan envisions installing a variety of computer and telecommunications equipment in the courts. Have the electrical, cooling, space, and other needs of the courts' automation plan been factored into the projects in the budget request?

ANSWER:

The cost of providing electrical, cooling, space, and other needs of the courts automation plan have been factored into the Judiciary budget request. These costs may be paid by GSA or the Judiciary depending on the particular project and needs.

Criminal Caseload

QUESTION:

The FY 1992 Budget for "Salaries & Expenses" includes $5.5 million for an estimated additional 700 Savings and Loan cases, involving an

average of 1.6 defendants per case, or 1,280 defendants. The justification is based on the "average resources required for processing defendants in difficult, complex cases". How does the Administrative Office calculate the additional costs associated with "difficult, complex" cases? Which types of cases fall into this category? How do the costs for such cases compare to those for criminal cases of "average" difficulty and complexity?

ANSWER:

The Administrative Office has only recently begun to differentiate between "average" cases and "difficult, complex" cases. To date, only drug and Savings and Loan (S&L) cases have been deemed to be "difficult, complex" cases. Drug cases first showed the need for this further break-down in case analysis. Because drug cases often involve multiple defendants (1.9 per case) and complex issues, the time taken to process them is longer. The staff years and resources for judges, clerks, jurors, public defenders, probation officers and others increase because of these complexities. Analysis indicates a cost of about $11,000 per defendant in drug cases.

In projecting costs for S&L cases, we also see increased complexities. There are multiple defendants, and large volumes of bookkeeping and investigative documents involved. According to the Justice Department and based on experience to date, an average of 1.6 defendants is involved in each S&L case. Criminal cases in general average about 1.2 defendants per case. Because of the similarity in the degree of complexity, and because of the lack of specific cost data for this type of case, cost estimates from drug cases were used as a basis for estimating the cost of S&L cases. The actual cost projections were adjusted to reflect the lower number of defendants per case. In addition, S&L defendants typically are lower risk and so the amount of resources anticipated for Probation Services (including interpreters and drug aftercare) was lowered. The defendants also were assumed to be able to provide their own counsel, and so no resources were shown for Defender Services. These reductions resulted in an average defendant cost of about $4,300.

QUESTION:

In estimating criminal case filings for future years, do you estimate the average complexity of expected cases as well as their number? If so, how?

ANSWER:

When projecting criminal case filings for future years, we do not estimate the complexity of these expected cases. Estimates of the complexity of future cases would require separate projections of each type of criminal case. It is difficult to estimate accurately the number and rate of change for all categories of criminal cases. We measure the complexity of criminal cases filed during a particular year by applying weighting factors based on the type of offense. The weights are based on *The 1979 Federal District Court Time Study*, produced by the Federal Judicial Center, which measured the amount of judge time necessary to close each type of case. The number of criminal weighted filings per authorized judgeship increased from 64 to 68 (a six percent increase) during the twelve month period ended June 30, 1990, and has risen approximately 13 percent since 1987.

The complexity of criminal filings has grown with the introduction of new offenses, new procedures, and changing judicial policies mandated by legislation such as the Comprehensive Crime Control Act, the Sentencing Reform Act of 1984 and the Anti-Drug Abuse Act of 1988. Drug cases are a good example of this problem. Under the current systems the weights for the different drug offenses are either equal to or below the measure of the "average" case, yet drug cases today typically involve more defendants and are more complex than other types of cases. The Federal Judicial Center is in the process of updating the criminal weights in a comprehensive time study that will provide a more up-to-date picture of the complexity of the criminal caseload.

QUESTION:

The budget justifications include estimates of the number of criminal filings expected in FY 1991 and FY 1992 (p. 5.52), but do not appear to have estimates of the number of criminal cases expected to be terminated during the year. Could you have provided estimates of the number of cases terminated in FY 1991 and FY 1992 (both criminal and civil)? How are the estimates of filings and terminations (if termination estimates are available) used in developing the budget requests for juries, defender services, and probation/pretrial services?

ANSWER:

Our caseload estimates do not include forecasts of the number of criminal or civil cases terminated. Although we could project the number of cases terminated for future years, we do not calculate these estimates because staffing needs are dependent on case filings. Filings more accurately measure the workload of the court; terminations are dependent on the number of filled positions and, in particular, on the number of judges. Budget requests based on cases terminated could underestimate the staff needed by the courts, particularly if filings are increasing or the number of cases terminated is relatively low due to staff or judgeship vacancies or the complexity of cases.

Estimates of criminal cases and defendant filings are used to forecast cases activated in pretrial services, appointments of Federal defenders, and persons received and under supervision by probation offices. The number of defendants handled by defender services, pretrial services and probation offices will increase or decrease with changes in the number of criminal defendants and cases filed. Our jury estimates are based on projections of civil and criminal trials; estimates of trials depend in large part on the number of civil and criminal cases filed.

QUESTION:

Based on the courts estimate of an average 1.38 defendants per case, the courts expect a total of about 76,000 criminal defendants to enter the courts in FY 1991 and 80,000 in FY 1992. What proportion of new defendants does the Defender Service expect to represent in

FY 1991 and FY 1992? Has the proportion represented been growing? If so, at what rate?

ANSWER:

It is anticipated that approximately 75 percent of criminal defendants entering the courts in FY 1991 and FY 1992 will be provided representation under the Criminal Justice Act. The percentage has remained fairly constant at about the 75 percent level.

Civil Caseload

QUESTION:

Civil trials have decreased 13 percent from FY 1986 to 1990 but civil jury trial days have remained fairly constant. Is this because more complex civil trials are being tried? What has been the trend in the average length of civil trials from FY 1986 to FY 1990?

ANSWER:

Although civil trials have decreased 13 percent from 1986 to 1990, civil jury trials have decreased only 9 percent from 5,222 to 4,765 over the same period. The average civil jury trial length has grown from 4.3 days in 1986 to 4.8 days in 1990. While there is no clear evidence that civil trials are growing more complex, the average length of civil jury trials is definitely growing and this suggests that cases are growing more complex.

QUESTION:

The budget estimates a steady increase in civil filings in FY 1991 and FY 1992. This estimate is based on increases in the "all other" category, plus a reversal of the drop in diversity jurisdiction cases, which are expected to increase about 10 percent over their FY 1990 level. What is the basis for the expected increase in these cases?

ANSWER:

Our civil caseload estimates include separate categories for social security, U.S. plaintiff recovery cases (primarily student and VA loan collections), diversity jurisdiction, and all other civil cases. The "all other" category includes prisoner petitions and forfeiture cases, two areas which are increasing. In 1990, prisoner petitions rose by 4 percent to 43,199 petitions filed. With the growth of the Federal prison population, we believe that prisoner petitions should continue to increase. There were 6,021 forfeiture and penalty cases filed in 1990, an increase of 11 percent over 1989 alone, and we expect that this growth will continue as law enforcement agencies seize property in connection with drug arrests. There should be additional caseload in the other civil categories. For example, civil suits in connection with savings and loan scandals are likely to increase.

The expected increase in diversity jurisdiction cases is based on historical data. When the diversity minimum was raised to $10,000 in 1958, diversity filings declined 34 percent over the next two years but increased steadily thereafter. In May of 1989, the minimum was raised again, this time to $50,000. As a result, diversity filing decreased 10 percent during FY 1989 and 8 percent during FY 1990. Excluding asbestos personal injury product liability cases, diversity filings declined 25 percent between FY 1988 and FY 1990. The historical data indicate that an increase in the diversity minimum causes a two-year decline in diversity filings. The recent decrease in diversity filings is likely to have ended late in FY 1990, and filings will increase during FY 1991 and FY 1992.

QUESTION:

While civil case filings have declined in recent years, the justifications note that the complexity of such cases has increased. What are the weighted filings for FY 1989 and FY 1990? Is there an estimate of weighted filings for FY 1991 and FY 1992?

ANSWER:

The overall decline in civil case filings in recent years is mostly attributable to the large decrease in less time-consuming cases (those with lower case weights). Filings of complex, time-consuming cases (those with higher case weights) such as asbestos, civil rights, and other contract actions, have increased or remained at high levels over the past five years.

Case type	1986	1990
Asbestos	5,463	13,687
Civil rights	20,128	18,793
Forfeitures	3,480	6,193
Labor laws	12,839	13,841

Two examples of the significant decreases in non-complex case filings are VA overpayment benefits, which declined 86 percent from 1986 to 1990 and disallowance of Social Security benefits, which decreased 48 percent during the same period.

The May 1989 legislation increasing the jurisdictional amount in diversity cases from $10,000 to $50,000 also contributed to the recent decline in civil filings. This change led to a 10 percent decline in diversity cases in FY 1989 and an additional 8 percent decrease in FY 1990. The reduction in case filings occurred in most types of diversity actions brought in Federal court. If this downturn is as fleeting as we expect, diversity filings will soon be on the rise.

One measure of the complexity of the caseload is the ratio of weighted filings to raw filings. The higher the ratio, the more complex the case mix. As shown in the figures below, the ratio grew slightly from 1989 to 1990, reflecting an increase in complexity.

FY 1989		Ratio	FY 1990		Ratio
Raw	Weighted		Raw	Weighted	
394	398	1.01	379	393	1.04

There is no estimate of weighted filings for FY 1991 and 1992. Because of the difficulty of projecting the mix of future cases we do not make that type of projection.

Civil Justice Expense and Delay Reduction Plans

QUESTION:

Could you provide a consolidated list of the FY 1991 and FY 1992 costs, by appropriation, that are associated with the development and implementation of Civil Justice Expense and Delay Reduction plans? Please indicate which of these costs are temporary (for example, apply only to plan development), and which are recurring? In what fiscal year do you expect to complete development of plans in all 94 districts?

ANSWER:

The following table provides the costs included in the FY 1991 supplemental and the FY 1992 request by appropriation and category:

CIVIL JUSTICE REFORM ACT OF 1990

Appropriation	FY 1991 Supplemental Positions	FY 1991 Supplemental Amount ($000)	FY 1991 Annualization Positions	FY 1991 Annualization Amount ($000)	FY 1992 New Requirements Positions	FY 1992 New Requirements Amount ($000)	Total Positions	Total Amount ($000)
Courts of Appeal, District Courts, and Other Judicial Services:								
Salaries and Expenses:								
Demonstration Courts (5)	13	$583		$353			13	$936
Pilot Courts (10)	44	1,901		1,312			44	3,213
EID Courts in FY 1991 (20)	70	2,424		3,246			70	5,670
EID Courts in FY 1992 (22)					73	5,914	73	5,914
Other Courts		61		39		765	0	865
Automation Support		231		135		366		732
Subtotal	127	5,200		5,085	73	7,045	200	17,330
Administrative Office	7	1,000		328	3	239	10	1,567
Federal Judicial Center*	16	1,633		400			16	2,033
Totals	150	$7,833		$5,813	76	$7,284	226	$20,930

*Some of these costs are applicable to the new judgeships.

Although some reduction in requirements is anticipated in FY 1993 and subsequent years, it is anticipated that the personnel and automation support costs required in the development phase will continue to be needed due to added workload resulting from implementing the new procedures. The costs for the advisory committee reporters and the associated travel will be minimal as, once the plans are implemented, only one annual meeting of each advisory group for assessment of the condition of the court's civil and criminal dockets is required. There will also be a reduction for non-recurring costs such as the ADP equipment requested in fiscal year 1992.

The Act requires that Early Implementation District Courts (EIDs) must develop and implement a civil justice expense and delay reduction plan no earlier than June 30, 1991 and no later than December 31, 1991. All other district courts must implement a plan by December 1993.

QUESTION:

To meet the law's requirements, the budget asks for funds to hire management analysts and lawyers, among others. How did you determine the type of personnel needed to meet the law's requirements?

ANSWER:

In order to assist in the formulation and implementation of the plans recommended by the advisory groups, courts will require the assistance of attorneys and high level management analysts to perform, among other functions, assessment of the court dockets, development of a civil justice expense and delay reduction plan, revision of local rules of practice, and the design of new case management procedures.

Attorneys and management analysts employed by the courts to develop and implement plans are expected to provide expertise on the applicability of plans and case management techniques already developed in state and local courts. In addition, they are expected to provide insight on state of the art expense and delay reduction plans and techniques which have been developed by scholars and by special projects conducted by various organizations.

Section 473(a) requires pilot courts to adopt differentiated case management techniques, which may result in the adoption by the courts of sophisticated case tracking systems, and alternative dispute resolution programs, including mediation, minitrial and summary jury trial. The demonstration courts also must develop differentiated case management systems or alternative dispute resolution programs. In addition these courts must consider the adoption of a number of other measures set forth in Section 473(b), such as early neutral evaluation programs. The courts will need legal professionals with experience in the judicial process including federal litigation, case management, and alternative dispute resolution procedures.

QUESTION:

What is the basis of the cost estimates associated with the development and implementation of civil litigation expense and delay reduction plans? For example, how did you determine the number of days that you would need the assistance of law professors to review and revise local rules and oversee plan development?

ANSWER:

The nature and scope of the action mandated by the Civil Justice Reform Act has not been previously undertaken by the federal courts and, naturally, the courts are unable to predict with certainty the costs which will be encountered. Accordingly, estimates are based on the personnel, consultant, travel and related resource requirements which have dictated expenditures by the courts on similar kinds of operations, such as local rules advisory committees and court annexed arbitration programs. In addition, clerks of court in twelve districts, including pilot and probable early implementation districts, have been informally consulted by the Administrative Office in order to gain a representative sampling of the perceived need for resources by courts throughout the country.

With respect to estimated days of work by law professors assisting in the development of plans, the estimate represents an average number of the hours identified as needed by the several courts consulted and is further defined by an assessment of the average hours normally expended for scholarly consultant services provided in similar court programs.

QUESTION:

Are there state models that can be used as a basic guide for developing the federal court plans? Could the use of these models reduce the cost and speed the implementation of the federal plans? For example, is there software and other ADP support that has been developed for state programs that could be adapted for federal use, rather than developing the programs from scratch?

ANSWER:

We are not aware of any state models that could be readily adapted to the needs of federal courts in satisfying the requirement for development by each district of an individual expense and delay reduction plan. The mix of cases which comes before state courts (e.g. domestic relations and juvenile cases) differs significantly from the case mix in federal courts. The methods of organization in many state courts are also markedly different from those in federal courts (e.g. state master calendar organization and federal individual calendar organization). The organic differences between the state and federal courts arising from their differing jurisdictional authority and organization make it difficult to prescribe identical, or even closely related, remedies for cost and delay in civil litigation.

We have discussed the possible adaptation of state developed software and other ADP support with the National Center for State Courts. The National Center maintains a computer lab for technology in the state courts and has surveyed 2,500 courts and their automated systems. The state courts are using databases which are first generation systems and not capable of complicated tasks, such as report generation. Our analysis shows that it would not be worth discarding the Federal system in favor of any of the systems being used by the state courts. The Federal court CIVIL system is a relational database, has reporting capabilities, and is extremely flexible.

Costs Associated with New Judges

QUESTION:

The Administrative Office provided a listing of the initial and recurring costs associated with the appointment of a new court of appeals or district judge. The difference in some of the costs for each type of judge is not immediately clear. For example, why is the general office equipment cost greater for a court of appeals judge, but the cost of furniture and furnishing less, though the court of appeals judges has a larger staff?

ANSWER:

The cost of general office equipment is based largely on the number of staff positions. Court of appeals judges have a staff of five, so the cost for equipment is greater than for a district court judge with a staff of three. Furniture and furnishing costs for circuit and district judges would be proportionately the same, except for the added cost to a district judge of furnishing a courtroom.

QUESTION:

What is funded by the annual recurring cost for "Space and Facilities" tenant alterations?

ANSWER:

The installation of electrical outlets, new signage, minor repairs, painting of offices, the duplication of keys, and moving doors, are all examples of recurring tenant alterations. Funds provided to a court for these minor recurring repairs are based on the number of judges in the district and, therefore, have been included as a cost of establishing a new judgeship.

Defender Service

QUESTION:

The FY 1991 "Defender Service" budget request anticipated the obligation of all available FY 1990 "Defender Service" appropriation funds, but subsequently $21.5 million was carried over into FY 1991. The FY 1992 budget estimates all available FY 1991 funds will be obligated. What is the basis for your estimate that the Defender Service will not have an unobligated balance to carry forward into FY 1993?

ANSWER:

During the first four months of fiscal year 1991, we have been monitoring the expenditure for panel attorneys very closely. The costs have been greater than anticipated, and the concern now is that funds authorized for FY 1991 may not be sufficient. The courts don't control the rate, number, nature, or complexity of cases that are assigned to panel attorneys. The panel attorneys are appointed and may make their claims as the case is completed, or at interim points before the case closes. Because of the length and complexity of the cases assigned, it appears that more interim payments are being requested, and therefore costs are increasing faster than anticipated. If this trend continues, the funds requested for fiscal year 1992 may not be sufficient to provide for the panel attorneys.

QUESTION:

Actual cost for the Defender Service's use of interpreters and psychiatrists more than doubled between FY 1988 and FY 1989 and continue to grow. The cost of psychiatric services in FY 1991 is expected to be twice as high as FY 1990. What is the source of the increased costs? How much is due to the accounting change made in FY 1989 and how much to the actual increase in the use of such services? Specifically, why are psychiatric costs expected to double from FY 1990 to FY 1991, then continue growing?

ANSWER:

Increased projections for psychiatric services are based on the Department of Justice's significant increase in U.S. Attorney staff in 1989, 1990, and 1991, and on the projected increase in drug prosecutions and death penalty habeas corpus representations entering the judicial system. Based on budgets and grants approved, over $1 million of psychiatric services will be required by Federal Public Defenders, Community Defender Organizations, and Death Penalty Resource Centers. The remaining $2.4 million will be required to deal with increases in psychiatric requirements as a result of drug and death penalty habeas corpus cases handled by panel attorneys. According to experts on death penalty litigation, each death penalty habeas case requires extensive psychiatric evaluations. The increased caseload in this area combined with recent developments in capital jurisprudence which are requiring greater investigation of mental health issues in these cases has increased the need for mental health expert assistance in preparing habeas corpus petitions for the courts.

The amount of the increase attributable to the change in accounting procedures approved by Congress in FY 1989 is difficult to pinpoint. That change occurred at the same time that the first death penalty resource centers were established, and their increased use of psychiatrist services became a factor.

Magistrate Judge Positions

QUESTION:

The fiscal year 1992 budget request includes 18 additional full-time magistrate judge positions and 86 supporting personnel for them. Have studies been done to measure the increased district judge productivity, if any, that accompanies the creation of such positions? For example, do such positions decrease the need for additional judges? Do they help the court reduce its case backlog? How do such full-time magistrate judge positions enable district court judges to increase their productivity?

ANSWER:

Although no formal studies have been conducted, it is now well-accepted that the assistance of full-time magistrate judges increases the productivity of the district courts. A full-time magistrate judge can perform the full range of duties authorized under the Magistrates Act. These duties involve both civil and criminal cases and include most matters that can be handled by a district court judge, except trials of felony cases. Total duties performed by magistrate judges in 1990 were over 450,000, with 268,000 criminal matters and 182,000 additional duties.

Again, there is no doubt that the authorization of additional magistrate judge positions decreases the need for district court judges. Nevertheless, the surge in the criminal docket has required an increase in district court judges. The rate of increase is just less dramatic than it would have been otherwise.

Full-time magistrate judges enable district court judges to increase their productivity in several ways. First, they can conduct all preliminary criminal matters and, of course, try misdemeanor cases. For the most part, however, full-time magistrate judges are able to help the district judges with their civil cases. They can handle any pretrial and post-trial motions and prepare reports and recommendations in habeas corpus and prisoner civil rights actions. They can try a civil case in its entirety if the parties consent. In the Civil Justice Reform Act of 1990, Congress recognized the crucial role that magistrate judges can play in civil case management.

Full utilization of magistrate judges can also help a court reduce its backlog. In the Southern District of Ohio, for example, the full-time magistrate judges devised and implemented a plan to schedule oral arguments in Social Security disability cases. Through concentrated effort, the court's backlog of Social Security cases was eliminated. Because the Speedy Trial Act mandates expedited treatment of felony cases, the backlogs of the district courts consist primarily of civil cases.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Civil Justice Reform Act

QUESTION:

How many courts do you estimate will have fully implemented their civil justice expense and delay reduction plans in fiscal year 1992?

ANSWER:

The Civil Justice Reform Act of 1990 (CJRA) requires all district courts to implement an expense and delay reduction plan by December 31, 1993. However, the Act requires 10 pilot courts, designated by the Judicial Conference, to implement plans which include mandated case management techniques by December 31, 1991. Section 103 of the Act permits courts to elect to become "Early Implementation Districts" by implementing a plan between June 30 and December 31,

1991. In addition, five courts were designated by CJRA as "demonstration courts" for the purpose of experimenting with specific case management techniques.

As a result of the discretion given to non-pilot courts regarding the implementation of delay reduction plans, it is difficult to project with accuracy the number of courts which will have plans implemented by the end of fiscal year 1992.

The current budget estimates that 57 courts will have fully implemented their plans by the end of fiscal year 1992. These estimates are based on the statutory requirement that 10 pilot courts have plans implemented by December 31, 1991, and that all 5 demonstration court will implement plans by that date. It is estimated that approximately 20 districts will elect to become "Early Implementation Districts" and also implement a plan by December 31, 1991 and that 20 to 25 additional courts will implement plans by September 30, 1992.

QUESTION:

In the long run, will the Judiciary realize savings due to greater efficiencies as a result of the mandate of Congress for implementation of civil justice expense and delay reduction plans? Can you discuss this issue?

ANSWER:

The implementation of civil justice expense and delay reduction plans is intended by the Civil Justice Reform Act to increase the efficiency of the federal courts and thereby to reduce cost and delay to litigants. If the goals of the legislation are achieved through the procedures required and suggested in the Act, the costs to litigants of pursuing litigation in the federal courts should decrease and the speed at which civil disputes move toward resolution should increase. There is at this time, however, no way of determining whether savings will be realized by the courts themselves as a result of such an accomplishment.

Some studies of costs in civil litigation have suggested that the additional personnel and other administrative resources required to reduce costs to litigants may result in increased public costs. Often, attempts by the courts to reduce their own costs and to promote administrative efficiency lead to an increase in costs to litigants. For example, the scheduling of a number of motions to be heard at one time may promote the efficient use of the time of judges and court personnel, but increase cost to litigants due to the time spent by attorneys waiting for their matter to be called.

If the premises of the statute are correct and the procedures suggested in the statute work as the sponsors hope they will, the funds expended for implementation will lead to a reduction in civil case processing delay. The actual amount of reduction, if there is any, can only be determined by the comparison study mandated by the statute at the conclusion of the Pilot Program. The issue of reduced costs to the courts, which is not addressed in the statute, could also be measured at that time.

QUESTION:

On page 5.19 of your budget justification you are requesting $3.1 million for ADP equipment for the implementation of the Civil Justice Reform Act. Why should this equipment not be purchased out of the ADP fund?

ANSWER:

If Congress approves these funds, they should be deposited into the Judiciary Automation Fund. The request of $3,135,000 is not for new computers. It is to provide additional processing capacity (e.g. memory upgrades and larger disk storage) for existing equipment installed in the courts. This additional capacity will be needed solely to meet the provisions of the Civil Justice Reform Act of 1990, which stipulates that civil justice expense and delay reduction plans be implemented in all district courts within three years. Meeting this mandate will require the extensive capture, manipulation, and reporting of new and existing data. Because the courts are authorized either to develop individual plans or to adopt a model plan developed by the Judicial Conference, the exact capacity requirements cannot be predetermined. Since currently installed automation equipment in some courts is operating at maximum capacity due to increased caseloads, it is clear that additional capacity will be required. For the purposes of the FY 1992 budget request, this requirement was calculated on the average cost of $55,000 for each of the 57 courts expected to be implemented in FY 1992.

Crime Victims Fund

QUESTION:

Currently, the first $2.2 million collected from the Crime Victims Fund above $150 million is available to offset administrative costs in the Judiciary. I understand that this money is being used to establish a Criminal Fine Center for an automated system to handle all collections.

Can you discuss the purpose and status of the Criminal Fine Center?

ANSWER:

Congress has authorized the Director of the Administrative Office to "establish a centralized and highly automated entity [to receive fine payments and enable] retrieval of up-to-date information on the status of any obligation covered by the system" 28 U.S.C. 604(a)(7).

The National Fine Center is designed to combine the administrative procedures of receipting, account maintenance, billing, notification, and record-keeping that are now performed with no coordination. It is intended to establish a national automated network that will provide on-line communication with clerks of court, probation officers, the headquarters of the Department of Justice, the United States attorneys and the Bureau of Prisons. It will also create a national data base which will provide national statistics on the total amount of assessments, fines, interest, and penalties collected and outstanding.

The National Fine Center will also process all restitution orders for victims of federal crimes. It will receive the payments from violators, disburse payments to victims, and notify violators, probation officers, and prosecutors of missed payments.

A pilot National Fine Center will begin operations in FY 1991 in one pilot district and four "feeder" districts. The program is planned for a staged expansion nationwide in all 94 districts during the next five years.

QUESTION:

Why do many fines go uncollected? Do you have any estimate of the increase in fines that the new center will collect?

ANSWER:

The financial inability of defendants to pay a fine is the major cause of many fines going uncollected. Other causes include the failure of law enforcement officials to pursue delinquent fine payments. Part of the problem lies with the lack of a single integrated record-keeping and notification system. Collecting fines from defendants who move between districts or whose fines are paid on an installment basis is particularly difficult to monitor. Under the present uncoordinated system, some fines continue to go uncollected because the record-keeping is inadequate.

We do not have specific estimates of the increase in fines that the new Fine Center will collect. A new and automated system will offer greater oversight of the collection process and will be a major improvement, which will inevitably increase collections.

Question:

Why will automation of fine collection enable you to increase receipts?

ANSWER:

An automated system will enhance the efficiency of all key officials who have a role in collecting fine payments. Probation officers will have instant and ready access to a probationer's record of fine payments. The Department of Justice will be provided up-to-date information on all delinquent fine payments, which will enable the Department to pursue such payments more efficiently. The Fine Center will also consolidate the notification process and will automatically alert defendants of their failure to pay fines and the consequences of their action.

Question:

Where will the Center be located?

ANSWER:

The Pilot National Fine Center is located in the Eastern District of North Carolina at Raleigh. For the pilot, the Center will operate as a unit of the district court and report directly to the clerk of court. The project is scheduled to operate as a pilot for two years. During this time, assessment, fine, and restitution accounts will be processed for the five district courts participating in the project. The other four courts are the Western District of Texas, the Southern District of Texas, the Western District of Missouri, and the Eastern District of Pennsylvania.

GSA Rental Charges

QUESTION:

On page 13 of your statement you indicate that GSA has advised you that rental costs will increase by 16 percent. Why is this increase so high?

ANSWER:

The General Services Administration (GSA) has the statutory authority to assess user agencies, including the Judiciary, charges for the space they occupy (The Public Buildings Amendments of 1972, Public Law 92-313).

GSA has indicated that the increase is derived in accordance with its policies and authorities for establishing agency space rental costs: Once every five years (fiscal year 1992 being the first year of a five year cycle), the space rental rates are developed by GSA using the services of professional appraisers. Federal properties are compared to similar buildings in the vicinity of the building being appraised -- with the objective to determine what a private landlord would charge a private tenant for GSA's space. The rates charged by GSA, therefore, are supposed to be representative of equivalent rates found in the private sector.

An analysis of space rental costs in several cities reveals increases for the Judiciary in 1992 which are significantly higher than the 16 percent
average. For example, the Judiciary will experience space rental rate increases of 29 percent in Los Angeles, 44 percent in New York, and 33 percent in Chicago.

QUESTION:

What has been the rent increase for the past few years?

ANSWER:

The rent increase for the past three years are shown below:

Fiscal year 1989: 2.0 percent
Fiscal Year 1990: 3.1 percent
Fiscal Year 1991: 4.0 percent

Automation Resources

QUESTION:

Your budget request includes $106.8 million for automation resources. This is a $21.3 million or 25% increase over the $85.5 million we approved last year. Does this request include the automation requirements for the 85 new judgeships approved by Congress last year?

ANSWER:

The FY 1992 automation budget request does not include funds for automation requirements for new judgeships. These funds are included in the request to establish a new judgeship rather than in the automation budget request.

Drug Prosecutions

QUESTION:

Your budget summary states:

> **"Because drug cases on average involve nearly two defendants per case, compared to slightly more than one defendant per case for other criminal offenses, the increase in drug filings is more meaningful. Each drug case has almost twice the impact on the court of other non-drug cases."**

Why is this true?

ANSWER:

Cases with two or more defendants are generally more burdensome because they can involve separate proceedings for each defendant. For example, one defendant may plead guilty, and the other demand a jury trial. Some procedures associated with a single case are performed twice, such as arraignments, motions, and sentencing hearings. Because drug cases are often intertwined, some defendants in a multi-defendant drug case may be involved in other cases, either as defendants or witnesses. Scheduling conflicts often result, necessitating continuances.

In addition, drug cases involve substantially more work overall than other criminal cases. Bail hearings for drug defendants are longer than hearings for other defendants because of the issues of drug dependency and danger to the community. Moreover, judicial officers consider a greater proportion of drug defendants for pretrial detention. Drug cases tend to have multiple attorneys, more motions filed, and longer trial times. Because of the number of defendants and attorneys, drug trials cannot always be conducted in existing courtrooms and commercial space must be rented or separate trials held for some of the defendants. Larger panels of potential jurors are summoned in controversial drug cases; the size of the jury panels and the length of trials raise juror costs significantly. Because of risks associated with some drug trials, courts may require additional security. In one case during 1990 that involved a continuing criminal enterprise, jurors' identities were ordered withheld by the judge, and bullet-proof panels had to be installed in the courtroom. Interpreters are often needed, particularly if the trial involves foreign nationals. Fines and forfeiture proceedings are more common in drug than other criminal cases, further increasing the work of the court. As a result of the amount of information that judges must consider in determining sentences, including the defendant's role and the amount and type of drugs, sentencing hearings for drug defendants are among the longest in the Federal system.

Budget Decentralization

QUESTION:

In 1987 you began a Pilot Budget Decentralization Program intended to give local court officials greater flexibility for managing their budgets.

- On page 14 of your statement, you say that decentralization will be well under way in 1992. Can you further discuss the purpose and status of your budget decentralization program ?
- What will be the long term benefits from budget decentralization?

ANSWER:

The original pilot budget decentralization goal was to provide greater autonomy to the local courts, and to place funding decisions in the courts. Local judicial officers can then make informed decisions on the courts' spending needs, more effectively adjust funding priorities and make reallocations. The ability to prioritize, plan, and reallocate funds provides the unit executives with the incentive to look for cost savings and operational efficiencies. When the decentralization effort is complete, the Administrative Office will continue to have the role of monitoring the courts to ensure that all applicable regulations are followed in adjusting and reallocating funds. The National Academy of Public Administration has concluded its three year evaluation of the project and has recommended that the decentralization be expanded to the other courts. In March 1991, the Judicial Conference approved expansion of the program on a voluntary basis. The program will be expanded to 21 courts in FY 1992, 40 additional courts in FY 1993, and the remaining courts, or most of them in FY 1994.

The long-term benefits of decentralization will be:

- Placement of fund management in the courts, where it can best be controlled.
- Flexibility in fund management to meet the courts' needs and to generate savings.
- Closer monitoring of local accounts.
- More efficient court operations.

Defender Services

QUESTION:

Your budget justification indicates that implementation of the Sentencing Reform Act will continue to have a substantial impact on the workload of the defender offices. In part, this is because attorneys must spend a great deal of time ensuring the accuracy of every fact which is relevant to the sentencing calculation.

Your justification also states that the sentencing guidelines will result in more cases being tried. Can you discuss why this is the case?

ANSWER:

Based upon consultations with a number of federal defenders, several factors seem to be influencing defendants' decisions in this regard:

a) The sentencing guidelines provide for the consideration of all "relevant conduct" in determining a sentence. "Relevant conduct" is not limited to the conduct which is the basis of the offense to which a defendant pleads guilty, but may include other conduct established by a preponderance of evidence. Thus, since the defendant cannot be assured that a plea to a particular count will result in a sentence based only on that count, there remains an incentive to go to trial and seek a verdict of acquittal.

b) The increase in the number of offenses which carry high mandatory minimum sentences has occurred simultaneously with the implementation of the sentencing guidelines. The mandatory minimum sentences cause more trials because the defendant has less of an incentive to plead guilty.

c) The sentencing guidelines provision which offers a reduction of sentence to defendants who provide "substantial assistance" to the government generally serves as an incentive to plead guilty where a defendant has substantial knowledge of a criminal enterprise. However, because CJA defendants are typically low-level participants in offenses who have little information to offer, these provisions offer less incentive to CJA defendants to plead guilty than to upper-level participants who are more likely to be represented by retained counsel.

d) Defendants perceive that sentences under the guidelines are extremely harsh in relation to their conduct, and are thus unwilling to forego the possibility of an acquittal in exchange for the certainty of a long and unchangeable prison term. This perception of harshness is particularly strong in conspiracy cases where the defendant may view his or her role as minor, but the guidelines require calculation of sentences in relation to the entire scope of the conspiracy.

QUESTION:

You are requesting $6.9 million to expand the number of districts which allow for payment of higher alternative rates to panel attorneys in high cost geographic areas. Your budget states that the ability of the courts to find competent attorneys is threatened by low rates of compensation. (Generally $40/hour for out-of court and $60/hour for in-court work.)

Do you have similar problems retaining public defenders in these districts? What is the rate of compensation for public defenders?

ANSWER:

In general, defender organizations are not experiencing difficulties in retaining public defenders. In accordance with the provisions of the Criminal Justice Act, salaries paid to public defenders and their staff may be comparable to but may not exceed salaries paid to U.S. attorneys and their staff. Presently, chief public defenders may be compensated up to $106,300, and staff attorney salaries range from $27,800 to $81,400, averaging approximately $57,000.

In most districts, conflict of interest constraints which require the appointment of separate counsel for defendants in multi-defendant and certain individual cases, prevent a defender organization from handling more than, on the average, 75% of the CJA caseload in a district. Thus, despite the availability of competent lawyers to accept salaried positions as federal defenders, the need remains to increase rates to attract private counsel to accept CJA appointments.

Administrative Office of the United States Courts

QUESTION:

On page two of your statement, you refer to the Federal Judgeship Act which authorizes 85 new judgeships. You state that you have found that one AO employee is necessary to service the needs of every two judgeships and their staffs.

- **This ratio seems quite high. Is this ratio necessary to gear up new offices, or is it an ongoing ratio even once new judges are in place?**

- **Can you discuss the kinds of services you provide to judgeships?**

ANSWER:

The ratio of one AO employee for every two judgeships represents the ratio of AO employees to judgeships only. Each judgeship that is filled generates approximately 38 positions when you consider the staff attorneys, clerks, secretaries, librarians, court recorders, probation officers, and other staff that support the caseload handled by each judge. In reality, the ratio is actually one AO employee for every 38 court employees, including the judgeships and their supporting personnel. This ratio is necessary to carry out the start up functions, such as space planning and procurement, as well as to provide the ongoing services required by the judges, their staffs, and all other court personnel.

The types of services provided to judgeships include: acquiring and altering space to meet the needs of judgeships and their supporting personnel, processing personnel actions, procuring furniture and equipment, providing payroll and other financial services, providing accounting and automation support, and providing training. These services are provided both at the time of start-up and on an ongoing basis as required.

FEDERAL TRADE COMMISSION

STATEMENT OF JANET D. STEIGER, CHAIRMAN

ACCOMPANIED BY:
RICK ARNOLD, BUDGET DIRECTOR
ROBERT WALTON, EXECUTIVE DIRECTOR

BUDGET REQUEST

Senator HOLLINGS. Next, we are going to hear from the Federal Trade Commission.

We are delighted this morning to have Chairman of the Federal Trade Commission, Chairman Janet Steiger. In 1992, the FTC has requested $82.3 million, an increase of $8.2 million or 11 percent over this year. Like the Securities and Exchange Commission, and we heard from them last week, OMB has also gone into your budget with respect to FTC fee collections and proposed that more of the FTC budget be financed by appropriations and general revenues rather than fees. That is a scored increase in outlays—which is becoming the bottom line today—that is $18.2 million or 33 percent over this year. That is the way we have to play the game under the summit agreement, as they say. That is not your fault. You did not vote for it, Madam Chairman, and neither did I.

Senator RUDMAN. Silence was at the table.

PREPARED STATEMENT

Senator HOLLINGS. We will include your statement in its entirety in the record, and you can deliver it or highlight it as you wish.

[The statement follows:]

STATEMENT OF JANET D. STEIGER

Mr. Chairman and Members of the Subcommittee: I am pleased to appear before you today to discuss the Federal Trade Commission's fiscal 1992 budget request and to answer your questions.

Congress has charged the Commission with protecting the American public from "unfair methods of competition" and "unfair or deceptive acts or practices" in the marketplace. With the resources requested in this budget, the Federal Trade Commission can continue to meet this important responsibility.

AGENCY REQUEST

The Commission's proposed budget for fiscal 1992 requests $82,296,000 and 937 work-years. This funding level is 11 percent higher than the agency's fiscal 1991 program level of $74,095,000,and 17 work-years greater than the 920 work-years planned in fiscal 1991. This $8,201,000 increase between fiscal 1991 and 1992 will fund the 17 work-year increase, annualized pay and retirement cost increases, and other inflationary cost increases over which the agency has no control.

The Commission sustained a nearly fifty percent reduction in work-years during the decade ending in 1989, leaving the agency with an insufficient level of resources to adequately perform our mandated activities. Beginning with the fiscal 1990 appropriation, the Commission was able for the first time in 10 years to stop its resource decline and provide for a small increase. In fiscal 1991, we are working to maintain our fiscal 1990 gains, as our workload continues at a high level. In fiscal

1992, we are requesting what we consider to be the minimum necessary increase in resources to continue to restore the Commission to an appropriate enforcement level; this request also provides full funding of base inflationary costs. This funding level will provide for the increase in work-years needed to help keep pace with the growth in antitrust related activity, and in efforts to address consumer injury resulting from such activity as telemarketing fraud and unfair or deceptive advertising and marketing practices.

FILING FEES

Beginning with the fiscal 1990 appropriation, Commission funding is composed of direct budget authority and fee income charged for Hart-Scott-Rodino pre-merger filings. Fully 27 percent of our funding, or $20,000,000, is now represented by fee income. The fiscal 1991 program level of $74,095,000 assumes full collection of the $20 million, but provides funding certainty in the event of a shortfall. In fiscal 1992, the proposed fee language would require a direct fee reliance of $10 million, and does not provide funding certainty in the event of a shortfall.

FISCAL 1991 FUNDING STATUS

Fiscal 1991 funding of $74,095,000 did not provide the full annual resources needed to continue the program level achieved at the end of fiscal 1990. Our funding situation was exacerbated by a further decline in merger filings and consequent fall in fees. Our operating plan of 920 work-years is a reduction from the approximately 950 work-year rate that ended fiscal 1990, resulting in a freeze on most hiring, and severe constraints in funding required to maintain, much less update, our automated systems base.

PROGRAMS

As in prior years, resources for fiscal 1992 will be directed against business practices that harm competition and injure consumers. In fiscal 1992, the Commission will continue to work directly with the business community to achieve voluntary compliance through education and articulation of policy. A case-by-case enforcement approach coupled with advisory efforts will continue to be the Commission's primary method of enforcing the law. This enforcement approach envisions combined efforts of the headquarters and regional office staff.

The Commission's budget request is almost equally divided between the agency's two missions. In fiscal year 1992 the Maintaining Competition mission is requesting $39.9 million and 449 work-years and the Consumer Protection mission is requesting $42.4 million and 488 work-years.

Maintaining Competition Mission.—The budget request for fiscal year 1992 includes an increase of 7 work-years over fiscal year 1991. Fifty percent of the funds collected from Hart-Scott-Rodino premerger filing fees are used to support this mission in part; the remainder goes to the Antitrust Division of the Department of Justice.

At a fiscal 1992 level of $39.9 million and 449 work-years, Maintaining Competition will provide a level of effort that will include challenging anticompetitive mergers that could lead to higher prices, restricted output, diminished innovation, or other harms to consumers. The Commission's merger efforts bring direct results for the consumer. Recent enforcement actions have resulted in a $23 million savings for the Department of Defense in the procurement of night vision devices, an obviously important product at this time, and the maintenance of competition in a market for lifting devices for the handicapped. In addition, in our enforcement of the premerger filing requirements under the Hart-Scott-Rodino Act, in the first four months of this fiscal year we have collected $2.9 million in civil penalties. We would expect to continue vigorously enforcing this statute in fiscal year 1992. We saw a substantial rise in merger activity over most of the last decade while our staff level declined. Even with the recent decline in merger filings, however, the staff will continue to be stretched thin.

We will investigate alleged restrictions on competition in the delivery of health care services and other licensed occupations. The health care services area, a major sector of the economy, seems to be constantly evolving, possibly raising new and different antitrust concerns. Antitrust enforcement can help to alleviate the rapidly rising prices that characterize this industry.

Our efforts also will include a continuation of our emphasis on finding and eliminating restraints among direct competitors that raise or maintain prices above competitive levels or otherwise harm consumers; assuring compliance with all outstanding Commission orders while reviewing selected orders, to ensure they still promote the procompetitive environment that is the central goal of the Commission's legal mandates; the rendering of advisory opinions to increase conformance by business with the laws we enforce; and responding to requests from Congress, other legislative bodies and federal and state regulators for our assessment of the competitive effects of proposed legislation, regulations or policies.

We continue to experience workload increases in both the merger and non-merger areas, including a major investigation into the infant formula industry. For example, our initial phase investigations increased by 88 percent in fiscal year 1990 and full phase investigations increased by 9 percent during the same period. Current activity indicates this trend will continue in these and other workload areas through fiscal year 1992. The additional 7 positions and related funding in fiscal 1992 will be used in both merger and nonmerger areas. The funding increase will allow the mission to accommodate current workloads without placing undue additional pressure on our already overworked staff.

Consumer Protection Mission.—The budget request for fiscal 1992 includes an increase of 10 work-years over fiscal 1991. The level of effort commensurate with the requested $42.4 million and 488 work-years will permit the targeting of areas where there is substantial consumer injury—particularly in cases involving fraud, deceptive sales or marketing practices, false or deceptive advertising, credit law, and violations of FTC rules and orders.

We will also work aggressively to educate consumers of their rights, and businesses of their responsibilities under the consumer protection laws, statutes, rules and decisions. When coordinated with law enforcement activities, this effort results in a cost effective way to obtain compliance with the law and protect consumers.

As a result of law enforcement efforts in fiscal year 1990, companies were ordered to pay over $2.2 million in civil penalties. This included $609,000 for violations of FTC Rules, $850,000 for violations of FTC orders, and $747,000 for violation of credit laws. In addition, over $50 million was ordered refunded to consumers to cover their losses in alleged law violations. This included over $30 million in cases involving telemarketing fraud and other kinds of fraud; and $20 million involving credit laws.

Our initial phase investigations increased by 37 percent in fiscal year 1990 and full phase investigations increased by 47 percent during the same period. Current activity indicates this trend will continue, resulting in an increase in other workload areas through fiscal year 1992. The request of 10 additional work-years and related funding will be used to implement mission-wide strategic plans. Emphasis will be given to cases involving the network of parties that support telemarketing fraud and other kinds of fraud. We will also concentrate efforts on industry-wide problems, especially in such areas as environmental advertising claims, diet programs, and "900" number telephone services. Using this strategy we can proceed against several key players in an industry simultaneously, and be in a position to demand settlements or seek litigated judgments that encourage uniform treatment of parties in similar situations.

MANAGEMENT INITIATIVE

The agency's major management initiative through fiscal 1992 continues to focus on ways to improve staff productivity through the increased use of modern information systems technology. Over the past five years, the FTC has developed and put in place a comprehensive infrastructure of systems to meet basic office automation, voice, and data communications, and central computing needs of the Commission and its staff. The potential productivity contribution of these systems remains to be fully realized, however, and for this reason, the first order of business now is to assure that these systems are maintained and used effectively. To tap this potential, the Commission has acted to partially restore recent cuts in our capital equipment budget. The fiscal 1992 budget also provides an increase of 2 work-years to support certain information systems bases.

AUTHORIZATION

As you know, the Commission has operated since fiscal year 1983 without authorization legislation. The appropriation language for the Commission has continued several provisions of the expired authorization bill. We request each year, including this year, that these provisions be deleted.

I know your committee has supported us in our efforts to secure authorization. The Commission is committed to this effort.

Mr. Chairman and members of the Subcommittee, I believe that our fiscal 1992 budget submission makes it clear that the Commission is determined to carry out effectively all its statutory mandates using only the necessary level of resources.

BIOGRAPHICAL SKETCH OF JANET D. STEIGER

Janet D. Steiger has been Chairman of the Federal Trade Commission since August 11, 1989. She was named by President Bush to a term that expires in September 1995.

Mrs. Steiger had been Chairman of the Postal Rate Commission since March 1982.

A Republican, she was nominated by President Carter and confirmed by the Senate as a Postal Rate Commissioner in 1980. President Reagan designated her Acting Chairman of the postal commission in 1981 and Chairman in 1982.

Since 1987, she has also been Chairman of the Commission to Assess Veterans' Education Policy, a two-year study commission mandated by Congress to recommend improvements in the administration of the G.I. bill.

A member of Phi Beta Kappa, she received her B.A. from Lawrence University of Wisconsin in 1961, and did postgraduate study at the University of Reading in England and at the University of Wisconsin—Madison. She was a Fulbright Scholar, a Woodrow Wilson Scholar, and a member of the Lawrence Board of Trustees.

Before government service, Mrs. Steiger was co-founder and vice president of the WorkPlace, Inc., a Washington office-and-research facility for freelance professionals. She has co-authored several books, including "To Light One Candle," a handbook for organizing, funding and maintaining public service programs, published by the American Bar Association.

At the Postal Rate Commission, she presided over the 10-month proceedings in the two largest rate cases in U.S. history, R–84 and R–87. In 1985, the Federally Employed Women of Washington awarded her the Outstanding Woman in Government Award for 1984.

Born in Oshkosh, Wisconsin, June 10, 1939, Mrs. Steiger is the widow of Congressman William A. Steiger and the mother of their 20-year-old son, Bill.

INTRODUCTION OF ASSOCIATES

Ms. STEIGER. Thank you. I will be brief with the usual disclaimer that the Commission always makes, that the testimony will be submitted for the record by the Commission. My own remarks and responses are my own responsibility and they do not necessarily represent the exact views of the individual commissioners or the Commission.

I would like to introduce this morning the staff accompanying me. This is Rick Arnold, our Budget Director and Robert Walton, our Executive Director. This whole crew back here can answer anything I cannot answer. They are our senior staff members.

FISCAL 1990 SUPPLEMENTAL

Before we begin discussion of the brief remarks I want to make on our 1992 budget, I would like very much to thank this committee for your assistance in the past year. You have mentioned the filing fees. Without your assistance in obtaining a supplemental very late in the last fiscal year, due to the decline in filing fees and our dependence on them for some 26 percent of our budget, we would have been in a serious deficiency position. The Commission expresses appreciation for the concern that you and your staff did show at that time.

AGENCY ACTIVITIES

I would like to report that using the small but very important infusion of additional resources that were provided to us in the last year, we were able to more vigorously challenge antitrust problems. There is one case I would like to highlight this morning since it is particularly relevant today. We challenged a merger that resulted in the savings of $23 million to the Department of Defense for the procurement of night vision devices. We have just been watching events related to these devices while waiting for this hearing.

We were also able to expand enforcement efforts in the consumer protection area. We have recovered more than $2.9 million in civil penalties as a result of that enforcement. More importantly, we are pleased to report more than $50 million in consumer redress to individuals who have sustained losses due to these alleged law violations.

FISCAL 1991 FUNDING LEVEL

As you know, fiscal 1991 funding did not, in the end, provide adequate resources to continue the program level that we had achieved in fiscal 1990. This has led to our beginning the 1991 fiscal year with a hiring freeze and to our cutting back on most expenses; most notably, in our automated data processing system, which is critical to our productivity and upon which we are very dependent. I am concerned about those cutbacks.

SUMMARY OF FISCAL 1992 REQUEST

As to fiscal 1992, the funding level of $82,296,000 is, as you noted, 11 percent higher this year, and 74 percent of that increase will cover inflationary costs. The balance, about $2.1 million, is for program increases, and this translates into approximately 17 additional work years. We think it is the minimum necessary to be able to continue to restore the Commission to an appropriate enforcement level.

AUTHORIZATION LEGISLATION

I would finally note that we continue to operate without authorization. As we have in the past, we hope to work toward that goal this year, if at all possible. That concludes my opening remarks, Mr. Chairman. I would be happy to respond to any questions that you may have.

OPTICAL CLEANING SOLUTION

Senator HOLLINGS. Well, Ms. Steiger, we really appreciate it. Since you mention vision, I wouldn't bring up an individual interest, but not just night vision then, since that case is raised; can you also look into the regular optical accessories like optic cleaner for the various lenses, soft lenses, hard lenses, the disinfectant solution, and the saline solution. I started buying those back in the seventies, and a bottle cost $1 or $1.50. They now cost $7 and $8. I suspect there is antitrust activity going on.

There is no technology to making saline solution or disinfectant solution or anything like that, but they just go up, up, and away. So in addition to night vision, let's get the regular day vision equipment. It is ruining us. I am very serious about it. I know, I just look at it and say, "That thing——" In fact, I have had a plant in South Carolina that makes it for a lot of people.

LEGAL AND HEALTH PROFESSIONS

With respect to the legal professions and the medical professions, I understand that the Commission is engaging in activity there, and when we find that out, of course, the doctors say, "Look, we have got our regular medical societies, we have our disciplinary and ethical commissions and committees; we have various review processes and everything else all within the State and under the law and the Federal Trade Commission ought to get into unfair trade practices rather than the medical and legal services."

Can you comment on that, please, before we start hearing from all the doctors and the lawyers?

Ms. STEIGER. The primary focus of our division that looks at health care professions is collusive activity, collective activity on the part of medical providers that would seek to raise prices or to frustrate cost containment activities. There were two cases I would highlight this year. We did bring a tying case involving a doctor who allegedly was tying outpatient dialysis services to inpatient. Apparently he had a monopoly power or at least market power in the outpatient dialysis, but could not take the profit because of the lid on payments from Medicare. Therefore, he was attempting to tie this to inpatient services where there was no such restraint. This matter resulted in a consent order.

That is one example. We have also proceeded against several pharmacies and pharmaceutical associations in settlement of charges when they attempted to boycott the State reimbursement plan to raise the level of reimbursement. That is the kind of activity that we are concerned with in the antitrust area, and we have long been active in that. Quality of care and other issues of that nature belong elsewhere.

Senator HOLLINGS. The lawyers, are you into that field, that they are employing false and deceptive advertising, maybe? I just do not agree with that advertising at all, but I am from the old school now. "To take all the worry out of your mind, just call a certain number" and all that. That just does not seem professional, but in any event, that is a fact of life. What is the Federal Trade Commission doing with respect to the legal system of lawyers practices?

Ms. STEIGER. We have no set provision for professional practices involving the law. I would mention a major case, however, that is a recent one. That is the *Supreme Court Trial Lawyers Association* case, where the Supreme Court upheld the Commission in affirming that collective action to engage in a boycott to increase prices by those lawyers was a, per se, antitrust violation. That has been a major case in that area, certainly, since I have been on the Commission.

TELEMARKETING

Senator HOLLINGS. With respect to telemarketing, what is the Commission doing?

Ms. STEIGER. We are very active in that field and have been since about 1983. We have brought cases against some 300 defendants. To date, we will recover some $71 million in consumer redress. Regrettably, this is a growth industry. Every time you stamp out some of it, it seems to pop up in another guise.

We have been very active this year in consumer identification, most notably in a cooperative consumer alert with the National Association of State Attorneys General, very early on in the gulf crisis, warning the public to be aware of telemarketing and other scams involving energy-saving devices, oil-saving devices, and the like. You could anticipate that was coming. I think we have had some deterrent effect there.

We continue to cooperate through our telemarketing fraud data bank, with some 34 States who are members of that telemarketing bank, and we have worked cooperatively on several cases with the State attorneys general. There is more than enough work for all of us. I expect we will continue a very strong focus in telemarketing fraud. The estimates that we hear of $1 billion in consumer loss yearly in this area, are, in my estimate, very conservative. It is still there.

COOPERATION BETWEEN FTC AND FCC

Senator HOLLINGS. Senator Rudman?

Senator RUDMAN. Let me just pick up on that point. Do you work with the FCC at all in the telemarketing area? Is there any coordination? I will tell you why I ask the question. Something that we are going to have to address here in the Congress is the use of automated dialing equipment in telemarketing. I have a constituent with a very interesting story. His phone rang, they picked it up, it was a telemarketing pitch for a real estate development in Florida. The person hung up the phone, had an emergency in the house 3 minutes later, picked up the phone—and the equipment varies from place to place—and did not have an open line until this 7-minute message that was being delivered. I was outraged by it, and then it happened to me approximately 2 weeks later. I did not have an emergency in the house. We got a telemarketing call. I hung up the telephone, picked up the telephone, and it was still connected.

Question: Is this something that you people are looking at, or is it strictly an FCC matter?

Ms. STEIGER. That would be more in the purview of the FCC.

Senator RUDMAN. I am going to talk to them, but are you looking at these automated dialing systems that they are using?

900 NUMBER SCAMS

Ms. STEIGER. We work very closely with the FCC in this area, as you might guess. We have brought two cases recently in the 900 area.

Senator HOLLINGS. Good.

Ms. STEIGER. Two of the most interesting cases we brought recently have to do with employment scams using 900 numbers. Typically, this is a false advertisement; it is deceptive. Either there is no useful information which you are going to gain from it, so there is a scam there, or they are just going to give you a sheet of paper that tells you nothing about employment.

As importantly, the number itself may be deceptive in that the consumer does not know the cost of the call, or does not realize that they are going to be referred to yet another number. We had instances where in calling the second 900 number, it cost about $20.

GOLD CARD CREDIT SCAM

We have brought cases there. We continue to look very actively at 900 number scams. Another area is this gold card credit scam that you have probably seen. We have brought two cases there. We are concentrating on the deceptive advertising and the deception of not knowing the cost of calling the number or of the product itself. We do not have authority over common carriers. That is the FCC's area.

TELECOMMUNICATIONS COMPANIES AND 900 NUMBERS

Senator RUDMAN. You do not, but you do have some authority over the business practices of companies.

Ms. STEIGER. We have pursued that.

Senator RUDMAN. I must say, and I have, coincidently, the chairman of the Senate Commerce Committee sitting next to me, that I find it remarkable that the telecommunications companies, the major long-distance carriers, do not do a better job of screening who can use 900 numbers. I mean, it just seems remarkable to me that you can pick up a telephone, dial a 900 number and it goes on your phone bill. I would think the phone company would be very concerned at the kind of people that were billing through them.

They get a fee, of course, for that, but the bill is for services that are spurious at best; fraudulent at worst, and I think it is a fruitful area for the Commission to look at. I mean, there is 900 number billing going on all over the country. I have had some horror stories of children using the 900 numbers and running up incredible bills on their parents.

But you dial the 900 number and your phone company sends you the bill at the end of the month. If you do not pay the bill, you do not have phone service. I think it is a very serious matter. I think that goes into business practices. That may be an FCC matter, but it seems to me it may be within the jurisdiction of the FTC to look at the practices of any business, be it a telecommunications company or other company, on how they allow consumers to be billed for services. I just cast that out.

INFANT FORMULA INVESTIGATION

Let me just ask you this: Senator Hollings and I have been very long-time supporters of the WIC Program, the feeding program for women, infants, and children. Of course, I was very interested in following your infant formula anticompetitive behavior investigation as to the pricing policies on infant formula. I do not know whether that is pending and you can talk about it or you can just give us generally the status of it, but I am very interested in that issue.

Ms. STEIGER. I think that it is publicly known that we are looking into practices in this industry. The industry is said to be characterized by rapid, parallel, and substantial price increases over recent years. I believe the figures indicate that the price of the product has risen some four times above the increase in milk prices and has exceeded the increase in the rate of inflation.

We are looking at whether there is anticompetitive conduct either to raise the price above competitive levels or in some other way control this market. We have heard, indeed, as you might have guessed, consumer complaints as well as complaints from individual WIC programs throughout the States, and that is an active ongoing investigation.

PROPOSED USE OF FUNDS FROM SPACE RENT APPEAL

Senator **RUDMAN**. Your request includes an increase of $2.3 million or 24 percent for rental payments to GSA; $1 million of this increase is for the main FTC building in Washington, which is Government-owned.

We understand you have appealed that decision. They have agreed to reduce it by $914,000. Since your budget request includes the full rent increase as originally proposed, how would you use the $914,000 if we did, in fact, appropriate it?

Ms. **STEIGER**. We very much hope to apply that to what I consider to be an extremely pressing problem in our automated data processing system. Let me explain briefly. This includes some 900 PC desktop units. It includes our computer interface system with our whole operation in the regions, and it includes, of course, a very cost-effective voice mail. It is getting old, sir. We are now doing way too much reactive maintenance. We are behind in our ability to replace obsolete desktops, and by the way, our longevity was predicted to be 5 years, which is very conservative, longer than most.

We have built a system mainly by ourselves. It is very cost effective, but it needs attention. What happens on a budget as narrow as ours where we have such high costs associated with personnel, with labor force, we do not have much flexibility in terms of cutting budgets. The result has been cuts from our ADP system, which is the work horse of our productivity, it has reduced our clerical component over time from slightly over one-third of the agency's work force to closer to one-fourth. It is a real savings, but it has become a step-child, and we cannot ignore it. We ignore it now at our peril. I would hope to be able to fund at least a portion of what we know is a needed improvement in that system.

COMMISSION-WIDE ADP NEEDS

Senator **RUDMAN**. What would the total cost be to outfit all people who have appropriate use for PC's and network them?

Ms. **STEIGER**. Well, we asked for an increase of $829,000, but I hasten to add that most people are now equipped. The question is: A rational replacement of outdated systems and improvement, being able to improve the software, which we really cannot do without funding, and in addition, more training. We have a very smart system, but the system is smart only to the extent that its users are, and we have not been able to do enough training. That is the kind of improvements I am talking about.

Senator **RUDMAN**. How much money a year would that take, and how many years would that take to bring it up to where you would like to have it? We have been doing it with a lot of agencies that come before us. That is why we ask the question.

Ms. STEIGER. I think we estimate we have unfunded needs of about $2.5 million. The amount we requested in the budget, and if we could apply at least some portion of the rent rebate, so to speak, it would go a very long way to at least upgrading the system to current need.

FILING FEES

Senator HOLLINGS. With the lost fees and with your experience running that Postal Rate Commission, do you have any suggestions how we might increase the charges of some kind to take care of this slack by the fees going over into the general fund? We need, and you need these increases. I think you made an outstanding presentation here and the committee wants to go along, but where do we get the money? You have got better experience about that than we have. What would you suggest if you were sitting on this side of the table?

Ms. STEIGER. I do not know that I could do it any better than you, that is for sure.

Senator HOLLINGS. What about the filing fees on mergers? Should we run it up from $20,000 to $30,000 or something like that?

Ms. STEIGER. I would only add the caution that we have had nearly 2 years' experience with that method of funding. Thank heavens for you folks, because in the first year we were on the most enormous roller coaster. Mergers are a cyclical activity. They will come back, but so far this year, as regard to the same period last year, fee-bearing merger filings are down about 40 percent. That will not surprise you with the economy and what is going on, but to make us dependent on that is very dangerous. Even with the generous assistance of a supplemental, we wound up in the last week of the fiscal year before we knew that we were not in a deficiency position. That is serious. So it is dangerous to rely on it, and we have seen these figures swing. That is my only caution.

CIVIL MONETARY PENALTIES AND CONSUMER REDRESS

Senator HOLLINGS. What is your suggestion?

Ms. STEIGER. I am willing to talk about any suggestions. I realize the monetary crunch here. I would add that there have been suggestions about returning, say, civil penalties to the agency. The Miscellaneous Receipts Act probably does not allow that. I would be reluctant to turn back consumer redress awards, for two reasons. They are meant to make whole, and, of course, they never do make whole, consumers who have been harmed by illegal activity. It is almost a tax on that consumer to use the redress to run our agency. Second, I think it raises a rather serious problem about the agency's independent judgment in the prosecuting of cases if we stand to gain from it.

Senator HOLLINGS. That is like the patrolman keeping the fine.

Ms. STEIGER. Yes, sir.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We have some other questions, Ms. Steiger, that we will submit for the Commission. Senator Inouye submitted some questions regarding the FTC policy on the soft drink franchise rulings. We will submit those for the record. Do you have any other questions?

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Telemarketing Fraud and "Infomercials"

QUESTION: There seems to be an outbreak of "infomercial" shows on television -- half hour TV shows that demonstrate a product to a public audience. Except the audience is actually made up of actors. Please explain the FTC's actions regarding these "infomercials." When are they fraudulent?

ANSWER: The program-length commercial, or "infomercial," is a relatively new form of advertising. The Federal Trade Commission's concerns about infomercials are two-fold. First, does the format of some infomercials create confusion in consumers' minds as to whether what they are watching is an advertisement or regular programming? Second, are some advertisers using infomercials to make unsubstantiated performance claims about a variety of products?

In the past two years, the Commission has taken an active role in ensuring that infomercials make clear to consumers that what they are watching is a commercial and that the objective advertising claims made for products sold through infomercials are truthful and substantiated. Since 1988, the Commission has brought eight cases against various infomercial marketers. For example, the Commission's consent agreement with Twin Star Productions, Inc., required the company to repay $1.5 million to consumers who had bought a purported baldness remedy, a purported impotence treatment, and a purported diet aid. Our settlement with Hal Morris and a company called Money Money Money, Inc., won $175,000 for consumers who had purchased a book titled How to Start Your Own Business by Doing Business with the Government." A second case involving that same publication has recently been withdrawn from adjudication to consider a consent agreement. There are also several other nonpublic Commission investigations pending.

QUESTION: What is the role of the states in telemarketing and infomercials versus that of the Commission?

ANSWERS: The Commission has enjoyed excellent cooperation from the state attorneys general in investigating these matters. For example, the Twin Star case arose out of investigations conducted by the Commission and the Attorney General's Offices in Texas and Arizona. On the same day that the FTC consent agreement was announced, Texas also announced a consent agreement with the company. The states have played an important role in assisting our investigations. The Commission looks forward to further cooperation with the states as we continue to take action against infomercials that use misleading formats or make misleading product claims.

The Commission and the states have also given high priority to attacking telemarketing fraud and have cooperated closely to reduce it. The National Association of Attorneys General and the Commission publicly announced a joint crackdown on telemarketing fraud in January 15, 1987. In accordance with that agreement, the Commission and the states have developed an electronic databank to share information about possible fraudulent telemarketers, conducted joint investigations that have led to telemarketing fraud prosecutions at both the state and federal level, and jointly produced educational materials designed to alert the public to the threat of telemarketing fraud.

In addition, the states have brought cases challenging fraudulent telemarketers and have provided information that facilitated the cases prosecuted by FTC. The states have assisted FTC cases by serving federal court orders, interviewing prospective witnesses, and providing general litigation support.

The Commission, in turn, has assisted state prosecutions. In particular, FTC staff have provided evidence of criminal activities developed during FTC civil proceedings to state criminal authorities in order to facilitate state criminal prosecutions of fraudulent telemarketers.

QUESTION: What role do the telephone companies play in assisting your efforts, if any?

ANSWER: The FTC has, on occasion, subpoenaed information held by telephone companies relating to the perpetrators of telemarketing frauds, and those companies have provided that information.

In addition, some telephone companies, e.g. Southwestern Bell, have cooperated with both state and federal law enforcement authorities by helping to produce and distribute to their customers consumer education materials warning of the threat posed by fraudulent telemarketers.

Finally, several telephone companies are members of the Alliance Against Fraud in Telemarketing, an organization that encourages the public to be alert to the threat posed by fraudulent telemarketers.

Federal Procurement

QUESTION: Chairman Steiger, your testimony indicates that the Commission saved the Department of Defense $23 million in the procurement of night vision devices. This sounds like the type of claim we would normally hear from the Department of Defense Inspector General or contract auditors. Could you explain the specifics of this case? How did the FTC save $23 million?

ANSWER: In the Imo case, the Commission sought and obtained a preliminary injunction preventing two of the major producers of night vision devices from merging. There was evidence in the case that, absent the two companies bidding independently, the bid at the next and last procurement for these particular devices likely would be a certain amount. After the Commission stalled the merger through the preliminary injunction, the two companies bid independently, and the winning bid was $22.5 million less than that forecast earlier.

QUESTION: What is the total amount FTC actions saved other federal agencies in FY 1990 or this fiscal year to date?

ANSWER: It is unusual that we know so specifically how much money is saved by one of our enforcement actions. However, similar, but less specific, evidence is sometimes found in other cases -- for example, where a company's documents state that prices are expected to increase after the merger. In many cases, the companies do not fully disclose their intentions and expectations, and the evaluative process is somewhat more difficult. Bear in mind that the analysis under Section 7 is predictive and probabilistic in nature, so we often do not know with certainty what actually would have happened in the absence of Commission action. We use our evaluative tools to make our best informed assessment of what is likely to happen.

FTC Personnel Levels

QUESTION: The FTC's personnel levels fell dramatically during the Reagan Administration and Jim Miller's tenure. Your agency went from about 1,500 in 1981 to below 900 in 1989. Your budget has been building up since then, and your 1992 request projects 937 workyears.

It looks as though through the 1980's your agency also got meaner as it got leaner. About one-fourth of your workforce is made up of clerical support staff while in 1984 about 36 percent of your workforce was clerical support. What are the ratios of support to professional positions you added in fiscal 1990 and 1991, and are requesting in the 1992 budget?

ANSWER: The ratio of clerical support personnel to professionals follows:

Fiscal Year		
1990	1991	1992
4:1 (19%)	5:1 (17%)	5:1 (17%)

The fiscal year 1992 request is projected to have the same ratio of clerical support to professional staff as fiscal year 1991.

QUESTION: I understand that the FTC is currently under a hiring freeze. Why is that? Won't that affect the amount you are requesting in FY 1992 --

these positions won't be on for a full year if the freeze continues, will they?

ANSWER: The fiscal year 1991 appropriation required the FTC to reduce its program level by $2,000,000, most of which was to be achieved through attrition of staff. Our low attrition rate to date in fiscal 1991 indicates that we will not achieve our planned level, thereby forcing us to find additional savings in non-compensation accounts in fiscal 1991. Further, when the annual fall hire employees report for duty in September and October 1991, the FTC will be at, or above, its fiscal 1992 budget request level. If attrition in fiscal 1991 does not increase, we will need to begin fiscal 1992 with a hiring freeze in place, in order to drop to our budget level; in any case, it is highly unlikely that we will begin below the budget level, thereby creating lapsed positions.

Due to our low attrition rate to date in fiscal 1991, we anticipate beginning fiscal 1992 at a high level. This would require us to start the fiscal year with a continuation of our current hiring freeze.

State Role Versus FTC

QUESTION: How many states support consumer protection agencies -- mini FTC's? By state, what are their funding and personnel levels?

ANSWER: All 50 states have one or more agency assigned to enforce state consumer protection laws. In each state, enforcement responsibilities are handled by the state Attorney General.

Staffing of consumer protection divisions varies widely, ranging from one attorney who may also be assigned other responsibilities, to more than a dozen attorneys who work full-time on consumer protection matters. Some Generals' offices combine consumer protection and antitrust matters in a single division.[1] Charts showing Attorneys General personnel and budget data are attached, but the Commission does not maintain records of how these data are allocated to specific enforcement functions.[2]

In many states, enforcement responsibilities are also handled by separate consumer protection offices, departments, or bureaus or by special agencies and commissions that handle complaints about such matters as banks, insurance, utilities, vocational and rehabilitation services, and weights and measures. We do not have records of these offices' budget or personnel levels.

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[1] See Ross, State Attorneys General, pp. 210-11 (BNA Books, 1990).

[2] The charts appear in the Ross book, at pp. 339-43.

Appendix B

Attorney General Personnel and Budgetary Data

Number of Attorney Positions in Offices of Attorney General (1989–90)

Jurisdiction	Number Paid by AG (FT/PT)	Number Paid by Other (FT/PT)	Total (FT/PT)
Alabama	62	0	62
Alaska	118/1	31/1	149/2
American Samoa	10	1	11
Arizona	148	98	246
Arkansas	40	1	41
California	622	0	622
Colorado	138/5	0	138/5
Connecticut	158/4	13	171/4
Delaware	65	25	90
District of Columbia	NA	NA	NA
Florida	200/1.5	22	222/1.5
Georgia	74	0	74
Hawaii	96	42	138
Idaho	22	58	80
Illinois (1987)	266/16	53	319/16
Indiana	85/5	1	86/1
Iowa	105/3	0	105/3
Kansas	27/1	5	32/1
Kentucky	59	1	60
Louisiana	44/1	56	100/1
Maine	44/2	36/7	80/9

Jurisdiction	Number Paid by AG (FT/PT)	Number Paid by Other (FT/PT)	Total (FT/PT)
Maryland	94/11	228/12	322/23
Massachusetts	146/5	6	152/5
Michigan	180	97	277
Minnesota	159/5	11	170/5
Mississippi	81	0	81
Missouri (1987)	95	1	96
Montana	23	1	24
Nebraska	30	10	40
Nevada	25	52	77
New Hampshire	52	2	54
New Jersey	560	0	560
New Mexico (1987)	62	0	62
New York	458/15	11	469/15
North Carolina	108	52	160
North Dakota	37	8	45
Ohio	261/36	35/21	296/57
Oklahoma	48	1	49
Oregon	151/11	37	188/11
Pennsylvania	156	0	156
Rhode Island	53	14	67
South Carolina	42	0	42
South Dakota	25	10	35
Tennessee	66	27	93
Texas	335/9	4	339/9
Utah	85	31	116
Vermont	26	23	49
Virginia (1987)	133	0	133
Washington	315/12	0	315/12
West Virginia	48	0	48
Wisconsin	87/7	0	87/7
Wyoming	32	11	43

Legend—FT-Full-time; PT-Part-time.

Number of Nonattorneys Employed Full-Time by Attorneys General (1989–90)*

Jurisdiction	Clerks Interns, Paralegals	Investigator	Professional/Technical Asst.	Total
Alabama	6	20	9	35
Alaska	45	7	12	64
American Samoa	1	6	2	9
Arizona	43	75	54	172
Arkansas	3	11	15	29
California	86	96	55	237
Colorado	26	11	28	65
Connecticut	17	6	13	36
Delaware	14	8	0	22
District of Columbia	23	14	12	49
Florida	19	7	75	101
Georgia	6	0	3	9
Hawaii	14	34	78	126
Idaho	—	4	2	6
Illinois (1987)	25	40	170	235
Indiana	20	10	7	37
Iowa	4	15	7	26
Kansas	0	10	—	10
Kentucky	8	43	42	93
Louisiana	11	20	14	45
Maine	6	13	3	22
Maryland	9	24	27	60
Massachusetts	15	53	61	129
Michigan	9	24	17	50
Minnesota	18	28	17	63
Mississippi	0	6	34	40
Missouri (1987)	5	11	29	45
Montana	1	1	3	5
Nebraska	9	2	1	12
Nevada	5	9	3	17
New Hampshire	7	12	8	27
New Jersey	33	409	227	669
New Mexico (1987)	8	19	12	39
New York	56	91	151	298
North Carolina	9	12	15	36
North Dakota	1	31	19	51
Ohio	30	125	215	370

Jurisdiction	Clerks Interns, Paralegals	Investigator	Professional/Technical Asst.	Total
Oklahoma	4	6	3	13
Oregon	5	21	139	165
Pennsylvania	11	231	57	299
Rhode Island	50	19	14	83
South Carolina	5	18	0	23
South Dakota	—	5	7	12
Tennessee	13	—	11	24
Texas	479	62	389	930
Utah	5	9	9	23
Vermont	—	6	13	19
Virginia (1987)	19	6	29	54
Washington	91	36	43	170
West Virginia	0	0	14	14
Wisconsin	12	90	147	249
Wyoming	4	—	3	7

*Excludes clerical support.

Attorneys General Budgets (1989–90)

Jurisdiction	Total Budget 1989–90
Alabama	8,288,530
Alaska	32,735,000
American Samoa	500,000
Arizona	29,474,000
Arkansas	4,957,444
California	248,647,000
Colorado	16,800,000
Connecticut	14,410,000
Delaware	5,483,000
District of Columbia	NA
Florida	24,883,500
Georgia	9,104,000
Hawaii	23,416,998
Idaho	4,587,800
Illinois	30,286,000
Indiana	6,500,000
Iowa	8,405,558
Kansas	3,425,000
Kentucky	9,904,000
Louisiana	12,723,775
Maine	4,300,000
Maryland	13,947,688
Massachusetts	17,960,480
Michigan	25,383,000
Minnesota	18,628,000
Mississippi	7,556,790
Missouri (1987)	7,694,000
Montana	1,772,107
Nebraska	3,942,198
Nevada	6,825,656
New Hampshire	5,274,712
New Jersey	101,197,000
New Mexico (1987)	7,188,000
New York	106,033,200
North Carolina	15,515,000
North Dakota	6,725,266
Ohio	46,994,703
Oklahoma	4,639,553
Oregon	36,163,000
Pennsylvania	36,022,000
Rhode Island	10,147,067
South Carolina	10,776,182
South Dakota	2,016,887
Tennessee	8,727,000
Texas	103,405,000
Utah	7,095,878
Vermont	1,907,000
Virginia (1987)	12,029,000
Washington	40,571,000
West Virginia	2,783,000
Wisconsin	34,892,500
Wyoming	5,753,000

QUESTION: How do you determine when FTC takes action versus a state consumer protection agency?

ANSWER: A number of factors influence the FTC's assessment of whether to defer to state authority rather than taking action itself. One consideration is whether the allegedly illegal practices have occurred on a local, rather than regional or nationwide basis. If the activities are local in scope, the FTC likely will defer to a state consumer protection action. If the practices have crossed state lines and caused substantial consumer injury, state and local agencies may defer to the FTC. Another consideration is whether the FTC or state agency is better able to obtain appropriate remedies. For example, in fraud cases, the defendants sometimes have a history of relocation. Nationwide injunctions would be the better remedy in such instances. On the other hand, a person or business that has established roots in a community may be unlikely to move to a different state to evade a state court order, and there would be no need for nationwide injunctions. Finally, the FTC has worked closely with states to coordinate the efficient allocation of resources. Most recently, the FTC and several state attorneys general have conducted "sweeps" of used car lots to monitor compliance with FTC's Used Car Trade Regulation Rule. We anticipate more efforts like this in the future, especially for rule enforcement.

QUESTION: Relative to the FTC's antitrust activities, what is the division of labor between FTC and Justice? When does FTC have the lead versus Justice (and vice versa) in antitrust issues? How about specific sectors of the economy, e.g., aviation. Which other federal agencies have a lead role?

ANSWER: The FTC and the Department of Justice, the two federal antitrust enforcement agencies, have largely overlapping jurisdictions. However, DOJ has the power to seek criminal penalties for certain antitrust violations, such as price fixing, while the FTC does not. The FTC and DOJ have a clearance procedure under which no investigation is initiated by either agency until it has been cleared with the other agency. This procedure was adopted to avoid duplication of effort and has worked well over the years. The clearance process, other than with respect to criminal activity, is based largely on each agency's industry expertise. The FTC specializes, among others, in the food, energy, health care, automotive, and retailing industries. DOJ specializes in the aluminum, aviation, banking, beer and steel industries.

The Federal Trade Commission Act itself also restricts the Commission's jurisdiction over industries that have historically been regulated by other federal agencies. These include banks and savings and loan institutions subject to the jurisdiction of the Comptroller of the Currency, Federal Reserve Board or Office of Thrift Supervision; federal credit unions under the jurisdiction of the National Credit Union Administration, common carriers subject to the Interstate Commerce and Federal Communications Acts (ICC and FCC); air carriers (currently subject to DOT and DOJ jurisdiction); and certain activities of entities subject to the Packers and Stockyards Act (Department of Agriculture).

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Soft Drink Issues

QUESTION: In the Conference Report for the supplemental Appropriations bill last year, the Congress expressed a concern about what appeared to be an emerging FTC staff policy unduly limiting the transfer of soft drink franchises from one local bottler to another. Is there anything you can tell us today about how the views of the FTC staff may be developing on this issue?

ANSWER: The Commission's staff neither follows a policy or guidelines specifically relating to soft drink franchise transfers, nor is it developing any policy or guidelines on the competitive effects of transferring soft drink franchises. Rather, the staff analyzes individual horizontal transfers of soft drink franchises under case precedent and government guidelines covering mergers and acquisitions that may violate Section 7 of the Clayton Act, 15 U.S.C. § 18 (1988), Section 5 of the Federal Trade Commission Act, 15

U.S.C. § 45 (1988), the *Merger Guidelines of the Department of Justice*, 4 Trade Reg. Rep. (CCH) ¶ 13,103 (June 14, 1984), and the *FTC Statement Concerning Horizontal Mergers*, 4 Trade Reg. Rep. (CCH) ¶ 13,200 (1982) contain such criteria.

QUESTION: As noted in the Conference Report, the legislative history of the 1980 Soft Drink Act is replete with references to the fact that promoting interbrand competition among soft drink concentrate manufacturers should be of primary concern. Is it the opinion of the Commission that the practice of transferring franchises from one local bottler to another promotes competition among the manufacturers?

ANSWER:[3] Promoting *inter*brand competition is the staff's primary concern. Indeed, in recent years, all of the staff's efforts in this area have been focused on preserving *inter*brand competition. Unduly concentrated bottling markets, however, can stifle *inter*brand competition. Bottlers could, for example, stifle *inter*brand competition by conspiring to fix the prices of the brands they sell in the market. In fact, the Department of Justice has caught bottlers conspiring to fix prices in several instances.

Because most branded soft drink markets are highly concentrated, consisting of no more than two to four bottlers, *horizontal* franchise transfers between competing local bottlers may lessen competition substantially in certain markets, in violation of Section 7 of the Clayton Act and Section 5 of the FTC Act, as described above.

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[3] This question and any response to it raise issues that could be viewed as central to an adjudicative matter pending before the Commission. *Coca-Cola Bottling Company of the Southwest*, D. 9215 (acquisition of Dr Pepper and Canada Dry franchises in the San Antonio, Texas area). To avoid creating the impression that the Commission has prejudged any of the factual issues in that pending adjudicative matter, Bureau of Competition staff is answering this question. *See Cinderella Career and Finishing Schools, Inc. v. FTC*, 425 F.2d 583, 591 (D.C. Cir. 1970).

Consider the following case example. There are two bottlers in a market. One of the two bottlers transfers all its brands to the other bottler, with concentrate companies approving the transfer of the franchises. After the transfer, there is only one bottler in the market. This merger to monopoly is likely to have the same anticompetitive effect as bottler price fixing.

FTC staff actions under the Commission's statutory authority and responsibilities, and under the above cited statutes and guidelines have been and are consistent with the Soft Drink Interbrand Competition Act, which in no way limits the Commission's responsibility under the antitrust laws to prevent *inter*brand restraints, including anticompetitive horizontal franchise transfers.

QUESTION: In a recent letter to House Judiciary Committee Chairman Brooks, Kevin Arquit, FTC Bureau of Competition Director, appears to draw a distinction between piggybacking that may occur when a new brand is introduced into a given area and piggybacking that results from the transfer of an existing brand. Yet, it would appear that both are procompetitive, do you agree?

ANSWER: Procompetitive results could be obtained in some circumstances if small soft drink manufacturers use strong local bottlers to introduce new brands into the market. This form of franchising does not eliminate a competitor from the market and has no immediate impact on market concentration. The introduction of a new brand is like internal expansion; such expansion does not usually violate Section 7 of the Clayton Act.

On the other hand, the transfer of an existing franchise from one bottler to another may increase concentration or eliminate an incumbent bottler. This may substantially lessen or eliminate competition in the local market.

Consider another case example. In markets A and B, there are two bottlers. In market A, a concentrate company awards a franchise for a new brand to one of the two bottlers. After the transfer, there are still two bottlers in the market. In market B, one of the two bottlers again transfers all its brands to the other bottler, again with the approval of the concentrate companies. After the transfer, there is only one bottler in market B. This merger to monopoly in market B is different from the grant of a new franchise in market A, and much more likely to be anticompetitive.

QUESTION: On a different yet related topic, last year the Senate Commerce, Science and Transportation Committee at my request, initiated a study on soft drink "giveaways". It is my understanding that this has now been upgraded to a full scale investigation. This investigation was prompted by the concern that certain "giveaway" practices may in fact be anticompetitive as such practices appear to prevent the availability of other soft drink products to consumers. What is the status of this investigation and what is the anticipated completion?

ANSWER: The Commission is currently awaiting the submission of certain additional data and documentary materials necessary to complete the investigation. The Commission anticipates that the report should be completed shortly after these materials are received.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

FTC Investigations of Environmental Marketing Claims

QUESTION: How many cases involving environmental claims is the FTC currently considering?

ANSWER: The FTC currently has 22 environmental marketing investigations.

QUESTION: What is the status of the investigations and when does the FTC expect to decide on taking action on these claims?

ANSWER: Several consent agreements are negotiated or are under review by the Commission. The other investigations are continuing. Decisions on what further action, if any, should be taken in these investigations should be made in the near future.

QUESTION: What standard will the FTC use in deciding whether to take action on these claims?

ANSWER: The FTC staff first reviews the advertisements or labels to determine what express or implied claims are made. It then analyzes these claims to determine whether they are false or unsubstantiated under Section 5 of the Federal Trade Commission Act. The standards that are applied in making these determinations are set out in the Commission's deception and substantiation policy statements. Copies of these statements are attached as Exhibits A and B.

EXHIBIT A

FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 14, 1983

The Honorable John D. Dingell
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter responds to the Committee's inquiry regarding the Commission's enforcement policy against deceptive acts or practices.[1] We also hope this letter will provide guidance to the public.

Section 5 of the FTC Act declares unfair or deceptive acts or practices unlawful. Section 12 specifically prohibits false ads likely to induce the purchase of food, drugs, devices or cosmetics. Section 15 defines a false ad for purposes of Section 12 as one which is "misleading in a material respect."[2] Numerous Commission and judicial decisions have defined and elaborated on the phrase "deceptive acts or practices" under both Sections 5 and 12. Nowhere, however, is there a single definitive statement of the Commission's view of its authority. The Commission believes that such a statement would be useful to the public, as well as the Committee in its continuing review of our jurisdiction.

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[1] S. Rep. No. 97-451, 97th Cong., 2d Sess. 16; H.R. Rep. No. 98-156, Part I, 98th Cong., 1st Sess. 6 (1983). The Commission's enforcement policy against unfair acts or practices is set forth in a letter to Senators Ford and Danforth, dated December 17, 1980.

[2] In determining whether an ad is misleading, Section 15 requires that the Commission take into account "representations made or suggested" as well as "the extent to which the advertisement fails to reveal facts material in light of such representations or material with respect to consequences which may result from the use of the commodity to which the advertisement relates under the conditions prescribed in said advertisement, or under such conditions as are customary or usual." 15 U.S.C. § 55. If an act or practice violates Section 12, it also violates Section 5. *Simeon Management Corp.*, 87 F.T.C. 1184, 1219 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978); *Porter & Dietsch*, 90 F.T.C. 770, 873-74 (1977), *aff'd*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980).

We have therefore reviewed the decided cases to synthesize the most important principles of general applicability. We have attempted to provide a concrete indication of the manner in which the Commission will enforce its deception mandate. In so doing, we intend to address the concerns that have been raised about the meaning of deception, and thereby attempt to provide a greater sense of certainty as to how the concept will be applied.[3]

I. SUMMARY

Certain elements undergird all deception cases. First, there must be a representation, omission or practice that is likely to mislead the consumer.[4] Practices that have been found misleading or deceptive in specific cases include false oral or written representations, misleading price claims, sales of hazardous or systematically defective products or services without adequate disclosures, failure to disclose information regarding pyramid sales, use of bait and switch techniques, failure to perform promised services, and failure to meet warranty obligations.[5]

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[3] Chairman Miller has proposed that Section 5 be amended to define deceptive acts. Hearing Before the Subcommittee for Consumers of the Committee on Commerce, Science, and Transportation, United States Senate, 97th Cong., 2d Sess. FTC's Authority Over Deceptive Advertising, July 22, 1982, Serial No. 97-134, p. 9. Three Commissioners believe a legislative definition is unnecessary. Id. at 45 (Commissioner Clanton), at 51 (Commissioner Bailey) and at 76 (Commissioner Pertschuk). Commissioner Douglas supports a statutory definition of deception. Prepared statement by Commissioner George W. Douglas, Hearing Before the Subcommittee for Consumers of the Committee on Commerce, Science and Transportation, United States Senate, 98th Cong. 1st Sess. (March 16, 1983) p. 2.

[4] A misrepresentation is an express or implied statement contrary to fact. A misleading omission occurs when qualifying information necessary to prevent a practice, claim, representation, or reasonable expectation or belief from being misleading is not disclosed. Not all omissions are deceptive, even if providing the information would benefit consumers. As the Commission noted in rejecting a proposed requirement for nutrition disclosures, "In the final analysis, the question whether an advertisement requires affirmative disclosure would depend on the nature and extent of the nutritional claim made in the advertisement." ITT Continental Baking Co. Inc., 83 F.T.C. 865, 965 (1976). In determining whether an omission is deceptive, the Commission will examine the overall impression created by a practice, claim, or representation. For example, the practice of offering a product for sale creates an implied representation that it is fit for the purposes for which it is sold. Failure to disclose that the product is not fit constitutes a deceptive omission. [See discussion below at 5-6] Omissions may also be deceptive where the representations made are not literally misleading, if those representations create a reasonable expectation or belief among consumers which is misleading, absent the omitted disclosure.

(Footnote Continued)

Second, we examine the practice from the perspective of a consumer acting reasonably in the circumstances. If the representation or practice affects or is directed primarily to a particular group, the Commission examines reasonableness from the perspective of that group.

Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary.

Non-deceptive omissions may still violate Section 5 if they are unfair. For instance, the R-Value Rule, 16 C.F.R. § 460.5 (1983), establishes a specific method for testing insulation ability, and requires disclosure of the figure in advertising. The Statement of Basis and Purpose, 44 Fed. Reg. 50,242 (1979), refers to a deception theory to support disclosure requirements when certain misleading claims are made, but the rule's general disclosure requirement is premised on an unfairness theory. Consumers could not reasonably avoid injury in selecting insulation because no standard method of measurement existed.

[5] Advertising that lacks a reasonable basis is also deceptive. *Firestone*, 81 F.T.C. 398, 451-52 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973). *National Dynamics*, 82 F.T.C. 488, 549-50 (1973); *aff'd and remanded on other grounds*, 492 F.2d 1333 (2d Cir.), *cert. denied*, 419 U.S. 993 (1974), *reissued*, 85 F.T.C. 391 (1976). *National Comm'n on Egg Nutrition*, 88 F.T.C. 89, 191 (1976), *aff'd*, 570 F.2d 157 (7th Cir.), *cert. denied*, 439 U.S. 821, *reissued*, 92 F.T.C. 848 (1978). The deception theory is based on the fact that most ads making objective claims imply, and many expressly state, that an advertiser has certain specific grounds for the claims. If the advertiser does not, the consumer is acting under a false impression. The consumer might have perceived the advertising differently had he or she known the advertiser had no basis for the claim. This letter does not address the nuances of the reasonable basis doctrine, which the Commission is currently reviewing. 48 Fed. Reg. 10,471 (March 11, 1983).

Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment. We discuss each of these elements below.

II. THERE MUST BE A REPRESENTATION, OMISSION, OR PRACTICE THAT IS LIKELY TO MISLEAD THE CONSUMER.

Most deception involves written or oral misrepresentations, or omissions of material information. Deception may also occur in other forms of conduct associated with a sales transaction. The entire advertisement, transaction or course of dealing will be considered. The issue is whether the act or practice is likely to mislead, rather than whether it causes actual deception.[6]

Of course, the Commission must find that a representation, omission, or practice occurred. In cases of express claims, the representation itself establishes the meaning. In cases of implied claims, the Commission will often be able to determine meaning through an examination of the representation itself, including an evaluation of such factors as the entire document, the juxtaposition of various phrases in the document, the nature of the claim, and the nature of the transaction.[7] In other

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[6] In Beneficial Corp. v. FTC, 542 F.2d 611, 617 (3d Cir. 1976), the court noted "the likelihood or propensity of deception is the criterion by which advertising is measured."

[7] On evaluation of the entire document:

> The Commission finds that many of the challenged Anacin advertisements, when viewed in their entirety, did convey the message that the superiority of this product has been proven [footnote omitted]. It is immaterial that the word "established", which was used in the complaint, generally did not appear in the ads; the important consideration is the net impression conveyed to the public. American Home Products, 98 F.T.C. 136, 374 (1981), aff'd, 695 F.2d (3d Cir. 1982).

On the juxtaposition of phrases:

> On this label, the statement "Kills Germs By Millions On Contact" immediately precedes the assertion "For General Oral Hygiene Bad Breath, Colds and Resultant Sore Throats" [footnote omitted]. By placing these two statements in close proximity, respondent has conveyed the message that since Listerine can kill millions of germs, it can cure, prevent and ameliorate colds and sore throats [footnote omitted]. Warner Lambert, 86 F.T.C. 1398, 1489-90 (1975), aff'd, 562 F.2d 749 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978) (emphasis in original).

(Footnote Continued)

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situations, the Commission will require extrinsic evidence that reasonable consumers reach the implied claims.[8] In all instances, the Commission will carefully consider any extrinsic evidence that is introduced.

Some cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading.[9] Information may be omitted from written[10] or oral[11] representations or from the commercial transaction.[12]

On the nature of the claim, *Firestone* is relevant. There the Commission noted that the alleged misrepresentation concerned the safety of respondent's product, "an issue of great significance to consumers. On this issue, the Commission has required scrupulous accuracy in advertising claims, for obvious reasons." 81 F.T.C. 398, 456 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973).

In each of these cases, other factors, including in some instances surveys, were in evidence on the meaning of the ad.

[8] The evidence can consist of expert opinion, consumer testimony (particularly in cases involving oral representations), copy tests, surveys, or any other reliable evidence of consumer interpretation.

[9] As the Commission noted in the Cigarette rule, "The nature, appearance, or intended use of a product may create an impression on the mind of the consumer . . . and if the impression is false, and if the seller does not take adequate steps to correct it, he is responsible for an unlawful deception." Cigarette Rule Statement of Basis and Purpose, 29 Fed. Reg. 8324, 8352 (July 2, 1964).

[10] *Porter & Dietsch*, 90 F.T.C. 770, 873-74 (1977), *aff'd*, 605 F.2d 294 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Simeon Management Corp.*, 87 F.T.C. 1184, 1230 (1976), *aff'd*, 579 F.2d 1137 (9th Cir. 1978).

[11] See, *e.g.*, *Grolier*, 91 F.T.C. 315, 480 (1978), *remanded on other grounds*, 615 F.2d 1215 (9th Cir. 1980), *modified on other grounds*, 98 FTC 882 (1981), *reissued*, 99 F.T.C. 379 (1982).

[12] In *Peacock Buick*, 86 F.T.C. 1532 (1975), *aff'd*, 553 F.2d 97 (4th Cir. 1977), the Commission held that

> absent a clear and early disclosure of the prior use of a late model car, deception can result from the setting in which a sale is made and the expectations of the buyer . . . *Id.* at 1555.

(Footnote Continued)

In some circumstances, the Commission can presume that consumers are likely to reach false beliefs about the product or service because of an omission. At other times, however, the Commission may require evidence on consumers' expectations.[13]

Marketing and point-of-sales practices that are likely to mislead consumers are also deceptive. For instance, in bait and switch cases, a violation occurs when the offer to sell the product is not a bona fide offer.[14] The Commission has also found deception where a sales representative misrepresented the purpose of the initial contact with customers.[15] When a product is sold, there is an implied representation that the product is fit for the purposes for which it is sold. When it is not, deception occurs.[16] There may be a concern about the way a product or service is marketed, such as where inaccurate or

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> [E]ven in the absence of affirmative misrepresentations, it is misleading for the seller of late model used cars to fail to reveal the particularized uses to which they have been put...When a later model used car is sold at close to list price...the assumption likely to be made by some purchasers is that, absent disclosure to the contrary, such car has not previously been used in a way that might substantially impair its value. In such circumstances, failure to disclose a disfavored prior use may tend to mislead. Id. at 1557-58.

[13] In Leonard Porter, the Commission dismissed a complaint alleging that respondents' sale of unmarked products in Alaska led consumers to believe erroneously that they were handmade in Alaska by natives. Complaint counsel had failed to show that consumers of Alaskan craft assumed respondents' products were handmade by Alaskans in Alaska. The Commission was unwilling, absent evidence, to infer from a viewing of the items that the products would tend to mislead consumers.

> By requiring such evidence, we do not imply that elaborate proof of consumer beliefs or behavior is necessary, even in a case such as this, to establish the requisite capacity to deceive. However, where visual inspection is inadequate, some extrinsic testimonial evidence must be added. 88 F.T.C. 546, 626, n.5 (1976).

[14] Bait and Switch Policy Protocol, December 10, 1975; Guides Against Bait Advertising, 16 C.F.R. § 238.0 (1967). 32 Fed. Reg. 15,540.

[15] Encyclopedia Britannica, 87 F.T.C. 421, 497 (1976), aff'd, 605 F.2d 964 (7th Cir. 1979), cert. denied, 445 U.S. 934 (1980), modified, 100 F.T.C. 500 (1982).

[16] See the complaints in BayleySuit, C-3117 (consent agreement) (September 30, 1983); Figgie International, Inc., D. 9166 (May 17, 198

incomplete information is provided.[17] A failure to perform services promised under a warranty or by contract can also be deceptive.[18]

III. THE ACT OR PRACTICE MUST BE CONSIDERED FROM THE PERSPECTIVE OF THE REASONABLE CONSUMER

The Commission believes that to be deceptive the representation, omission or practice must be likely to mislead reasonable consumers under the circumstances.[19] The test is whether the consumer's interpretation or reaction is reasonable.[20] When representations or sales practices are targeted to a specific audience, the Commission determines the effect of the practice on a reasonable member of that group. In evaluating a particular practice, the Commission considers the totality of the practice in determining how reasonable consumers are likely to respond.

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[17] The Commission's complaints in Chrysler Corporation, 99 F.T.C. 347 (1982), and Volkswagen of America, 99 F.T.C. 446 (1982), alleged the failure to disclose accurate use and care instructions for replacing oil filters was deceptive. The complaint in Ford Motor Co., D. 9154, 96 F.T.C. 362 (1980), charged Ford with failing to disclose a "piston scuffing" defect to purchasers and owners which was allegedly widespread and costly to repair. See also General Motors, D. 9145 (provisionally accepted consent agreement, April 26, 1983).

[18] See Jay Norris Corp., 91 F.T.C. 751 (1978), aff'd with modified language in order, 598 F.2d 1244 (2d Cir. 1979), cert. denied, 444 U.S. 980 (1979) (failure to consistently meet guarantee claims of "immediate and prompt" delivery as well as money back guarantees); Southern States Distributing Co., 83 F.T.C. 1126 (1973) (failure to honor oral and written product maintenance guarantees, as represented); Skylark Originals, Inc., 80 F.T.C. 337 (1972), aff'd, 475 F.2d 1396 (3d Cir. 1973) (failure to promptly honor moneyback guarantee as represented in advertisements and catalogs); Capitol Manufacturing Corp., 73 F.T.C. 872 (1968) (failure to fully, satisfactorily and promptly meet all obligations and requirements under terms of service guarantee certificate).

[19] The evidence necessary to determine how reasonable consumers understand a representation is discussed in Section II of this letter.

[20] An interpretation may be reasonable even though it is not shared by a majority of consumers in the relevant class, or by particularly sophisticated consumers. A material practice that misleads a significant minority of reasonable consumers is deceptive. See Heinz W. Kirchner, 63 F.T.C. 1282 (1963).

A company is not liable for every interpretation or action by a consumer. In an advertising context, this principle has been well-stated:

> An advertiser cannot be charged with liability with respect to every conceivable misconception, however outlandish, to which his representations might be subject among the foolish or feeble-minded. Some people, because of ignorance or incomprehension, may be misled by even a scrupulously honest claim. Perhaps a few misguided souls believe, for example, that all "Danish pastry" is made in Denmark. Is it therefore an actionable deception to advertise "Danish pastry" when it is made in this country? Of course not. A representation does not become "false and deceptive" merely because it will be unreasonably misunderstood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed. Heinz W. Kirchner, 63 F.T.C. 1282, 1290 (1963).

To be considered reasonable, the interpretation or reaction does not have to be the only one.[21] When a seller's representation conveys more than one meaning to reasonable consumers, one of which is false, the seller is liable for the misleading interpretation.[22] An interpretation will be presumed reasonable if it is the one the respondent intended to convey.

The Commission has used this standard in its past decisions. "... The test applied by the Commission is whether the interpretation is reasonable in light of the claim."[23] In the Listerine case, the Commission evaluated the claim from the perspective of the "average listener."[24] In a case involving the sale of encyclopedias, the Commission observed "[i]n determining the meaning of an advertisement, a piece of promotional material or a sales presentation, the important criterion is the net impression that it is likely to make on the general populace.[25] The decisions in *American Home Products*, *Bristol Myers*, and *Sterling Drug* are replete with references to reasonable consumer interpretations.[26] In a land sales case, the Commission evaluated the oral statements and written representations "in light of the sophistication and understanding of the persons to whom they were directed."[27] Omission cases are no different: the Commission examines the failure to disclose in light of expectations and understandings of the typical buyer[28] regarding the claims made.

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[21] A secondary message understood by reasonable consumers is actionable if deceptive even though the primary message is accurate. Sears, Roebuck & Co., 95 F.T.C. 406, 511 (1980) aff'd, 676 F.2d 385, (9th Cir. 1982); Chrysler, 87 F.T.C. 749 (1976), aff'd, 561 F.2d 357 (D.C. Cir.), reissued 90 F.T.C. 606 (1977); Rhodes Pharmacal Co., 208 F.2d 382, 387 (7th Cir. 1953), aff'd, 348 U.S. 940 (1955).

[22] National Comm'n on Egg Nutrition, 88 F.T.C. 89, 185 (1976), enforced in part, 570 F.2d 157 (7th Cir. 1977); Jay Norris Corp., 91 F.T.C. 751, 836 (1978), aff'd, 598 F.2d 1244 (2d Cir. 1979).

[23] National Dynamics, 82 F.T.C. 488, 524, 548 (1973), aff'd, 492 F.2d 1333 (2d Cir.), cert. denied, 419 U.S. 993 (1974), reissued 85 F.T.C. 391 (1976).

[24] Warner-Lambert, 86 F.T.C. 1398, 1415 n.4 (1975), aff'd, 562 F.2d 749 (D.C. Cir. 1977), cert. denied, 435 U.S. 950 (1978).

When representations or sales practices are targeted to a specific audience, such as children, the elderly, or the terminally ill, the Commission determines the effect of the practice on a reasonable member of that group.[29] For instance, if a company markets a cure to the terminally ill, the practice will be evaluated from the perspective of how it affects the ordinary member of that group. Thus, terminally ill consumers might be particularly susceptible to exaggerated cure claims. By the same token, a practice or representation directed to a well-educated group, such as a prescription drug advertisement to doctors, would be judged in light of the knowledge and sophistication of that group.[30]

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[25] *Grolier*, 91 F.T.C. 315, 430 (1978), *remanded on other grounds*, 615 F.2d 1215 (9th Cir. 1980), *modified on other grounds*, 98 F.T.C 882 (1981), *reissued*, 99 F.T.C 379 (1982).

[26] *American Home Products*, 98 F.T.C. 136 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982). "...consumers may be led to expect, quite reasonably..." (at 386); "...consumers may reasonably believe..." (*Id*. n.52); "...would reasonably have been understood by consumers..." (at 371); "The record shows that consumers could reasonably have understood this language..." (at 372). See also, pp. 373, 374, 375. *Bristol-Myers*, D. 8917 (July 5, 1983), appeal docketed, No. 83-4167 (2nd Cir. Sept. 12, 1983). "... ads must be judged by the impression they make on reasonable members of the public..." (Slip Op. at 4); "...consumers could reasonably have understood..." (Slip Op. at 7); "...consumers could reasonably infer..." (Slip Op. at 11). *Sterling Drug, Inc.*, D. 8919 (July 5, 1983), appeal docketed, No. 83-7700 (9th Cir. Sept. 14, 1983). "...consumers could reasonably assume ..." (Slip Op. at 9); "...consumers could reasonably interpret the ads..." (Slip Op. at 33).

[27] *Horizon Corp.*, 97 F.T.C. 464, 810 n.13 (1981).

[28] *Simeon Management*, 87 F.T.C. 1184, 1230 (1976).

[29] The listed categories are merely examples. Whether children, terminally ill patients, or any other subgroup of the population will be considered a special audience depends on the specific factual context of the claim or the practice.

The Supreme Court has affirmed this approach. "The determination whether an advertisement is misleading requires consideration of the legal sophistication of its audience." *Bates v. Arizona*, 433 U.S. 350, 383 n.37 (1977).

As it has in the past, the Commission will evaluate the entire advertisement, transaction, or course of dealing in determining how reasonable consumers are likely to respond. Thus, in advertising the Commission will examine "the entire mosaic, rather than each tile separately."[31] As explained by a court of appeals in a recent case:

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[30] In one case, the Commission's complaint focused on seriously ill persons. The ALJ summarized:

> According to the complaint, the frustrations and hopes of the seriously ill and their families were exploited, and the representations had the tendency and capacity to induce the seriously ill to forego conventional medical treatment worsening their condition and in some cases hastening death, or to cause them to spend large amounts of money and to undergo the inconvenience of traveling for a non-existent "operation." Travel King, 86 F.T.C. 715, 719 (1975).

In a case involving a weight loss product, the Commission observed:

> It is obvious that dieting is the conventional method of losing weight. But it is equally obvious that many people who need or want to lose weight regard dieting as bitter medicine. To these corpulent consumers the promises of weight loss without dieting are the Siren's call, and advertising that heralds unrestrained consumption while muting the inevitable need for temperance, if not abstinence, simply does not pass muster. Porter & Dietsch, 90 F.T.C. 770, 864-865 (1977), aff'd, 605 F.2d 294 (7th Cir. 1979), cert. denied, 445 U.S. 950 (1980).

Children have also been the specific target of ads or practices. In Ideal Toy, the Commission adopted the Hearing Examiner's conclusion that:

> False, misleading and deceptive advertising claims beamed at children tend to exploit unfairly a consumer group unqualified by age or experience to anticipate or appreciate the possibility that representations may be exaggerated or untrue. Ideal Toy, 64 F.T.C. 297, 310 (1964).

See also, Avalon Industries Inc., 83 F.T.C. 1728, 1750 (1974).

[31] FTC v. Sterling Drug, 317 F.2d 669, 674 (2d Cir. 1963).

The Commission's right to scrutinize the visual and aural imagery of advertisements follows from the principle that the Commission looks to the impression made by the advertisements as a whole. Without this mode of examination, the Commission would have limited recourse against crafty advertisers whose deceptive messages were conveyed by means other than, or in addition to, spoken words. *American Home Products*, 695 F.2d 681, 688 (3d Cir. Dec. 3, 1982).[32]

Commission cases reveal specific guidelines. Depending on the circumstances, accurate information in the text may not remedy a false headline because reasonable consumers may glance only at the headline.[33] Written disclosures or fine print may be insufficient to correct a misleading representation.[34] Other practices of the company may direct consumers' attention away from the qualifying disclosures.[35] Oral statements, label disclosures or point-of-sale material will not necessarily correct a deceptive representation or omission.[36] Thus, when the first contact between a seller and a buyer occurs through a

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[32] Numerous cases exemplify this point. For instance, in *Pfizer*, the Commission ruled that "the net impression of the advertisement, evaluated from the perspective of the audience to whom the advertisement is directed, is controlling." 81 F.T.C. 23, 58 (1972).

In a subsequent case, the Commission explained that "[i]n evaluating advertising representations, we are required to look at the complete advertisement and formulate our opinions on them on the basis of the net general impression conveyed by them and not on isolated excerpts." *Standard Oil of Calif.*, 84 F.T.C. 1401, 1471 (1974), *aff'd as modified*, 577 F.2d 653 (9th Cir. 1978), *reissued*, 96 F.T.C. 380 (1980).

The Third Circuit stated succinctly the Commission's standard. "The tendency of the advertising to deceive must be judged by viewing it as a whole, without emphasizing isolated words or phrases apart from their context." *Beneficial Corp. v. FTC*, 542 F.2d 611, 617 (3d Cir. 1976), *cert. denied*, 430 U.S. 983 (1977).

[33] In *Litton Industries*, the Commission held that fine print disclosures that the surveys included only "Litton authorized" agencies were inadequate to remedy the deceptive characterization of the survey population in the headline. 97 F.T.C. 1, 71, n.6 (1981), *aff'd as modified*, 676 F.2d 364 (9th Cir. 1982). Compare the Commission's note in the same case that the fine print disclosure "Litton and one other brand" was reasonable to qualify the claim that independent service technicians had been surveyed. "[F]ine print was a reasonable medium for disclosing a qualification of only limited relevance." 97 F.T.C. 1, 70, n.5 (1981).

In another case, the Commission held that the body of the ad corrected the possibly misleading headline because in order to enter the contest, the consumer had to read the text, and the text would eliminate any false impression stemming from the headline. *D.L. Blair*, 82 F.T.C. 234, 255-256 (1973).
(Footnote Continued)

In one case, respondent's expert witness testified that the headline (and accompanying picture) of an ad would be the focal point of the first glance. He also told the administrative law judge that a consumer would spend "[t]ypically a few seconds at most" on the ads at issue. Crown Central, 84 F.T.C. 1493, 1543 nn. 14-15 (1974).

[34] In Giant Food, the Commission agreed with the examiner that the fine-print disclaimer was inadequate to correct a deceptive impression. The Commission quoted from the examiner's finding that "very few if any of the persons who would read Giant's advertisements would take the trouble to, or did, read the fine print disclaimer." 61 F.T.C. 326, 348 (1962).

Cf. Beneficial Corp. v. FTC, 542 F.2d 611, 618 (3d Cir. 1976), where the court reversed the Commission's opinion that no qualifying language could eliminate the deception stemming from use of the slogan "Instant Tax Refund."

[35] "Respondents argue that the contracts which consumers signed indicated that credit life insurance was not required for financing, and that this disclosure obviated the possibility of deception. We disagree. It is clear from consumer testimony that oral deception was employed in some instances to cause consumers to ignore the warning in their sales agreement..." Peacock Buick, 86 F.T.C. 1532, 1558-59 (1974).

[36] Exposition Press, 295 F.2d 869, 873 (2d Cir. 1961); Gimbel Bros., 61 F.T.C. 1051, 1066 (1962); Carter Products, 186 F.2d 821, 824 (1951).

By the same token, money-back guarantees do not eliminate deception. In Sears, the Commission observed:

> A money-back guarantee is no defense to a charge of deceptive advertising....A money-back guarantee does not compensate the consumer for the often considerable time and expense incident to returning a major-ticket item and obtaining a replacement.

Sears, Roebuck and Co., 95 F.T.C. 406, 518 (1980), aff'd, 676 F.2d 385 (9th Cir. 1982). However, the existence of a guarantee, if honored, has a bearing on whether the Commission should exercise its discretion to prosecute. See Deceptive and Unsubstantiated Claims Policy Protocol, 1975.

deceptive practice, the law may be violated even if the truth is subsequently made known to the purchaser.[37] *Pro forma* statements or disclaimers may not cure otherwise deceptive messages or practices.[38]

Qualifying disclosures must be legible and understandable. In evaluating such disclosures, the Commission recognizes that in many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller. Disclosures that conform to the Commission's Statement of Enforcement Policy regarding clear and conspicuous disclosures, which applies to television advertising, are generally adequate.

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[37] See *American Home Products*, 98 F.T.C. 136, 370 (1981), *aff'd*, 695 F.2d 681, 688 (3d Cir. Dec. 3, 1982). Whether a disclosure on the label cures deception in advertising depends on the circumstances:

> ...it is well settled that dishonest advertising is not cured or excused by honest labeling [footnote omitted]. Whether the ill-effects of deceptive nondisclosure can be cured by a disclosure requirement limited to labeling, or whether a further requirement of disclosure in advertising should be imposed, is essentially a question of remedy. As such it is a matter within the sound discretion of the Commission [footnote omitted]. The question of whether in a particular case to require disclosure in advertising cannot be answered by application of any hard-and-fast principle. The test is simple and pragmatic: Is it likely that, unless such disclosure is made, a substantial body of consumers will be misled to their detriment? *Statement of Basis and Purpose for the Cigarette Advertising and Labeling Trade Regulation Rule*, 1965, pp. 89-90. 29 Fed. Reg. 8325 (1964).

Misleading "door openers" have also been found deceptive (*Encyclopedia Britannica*, 87 F.T.C. 421 (1976), *aff'd*, 605 F.2d 964 (7th Cir. 1979), *cert. denied*, 445 U.S. 934 (1980), *as modified*, 100 F.T.C. 500 (1982)), as have offers to sell that are not bona fide offers (*Seekonk Freezer Meats, Inc.*, 82 F.T.C. 1025 (1973)). In each of these instances, the truth is made known prior to purchase.

[38] In the Listerine case, the Commission held that *pro forma* statements of no absolute prevention followed by promises of fewer colds did not cure or correct the false message that Listerine will prevent colds. *Warner Lambert*, 86 F.T.C. 1398, 1414 (1975), *aff'd*, 562 F.2d 749 (D.C. Cir. 1977), *cert. denied*, 435 U.S. 950 (1978).

CCH *Trade Regulation Reporter*, ¶ 7569.09 (Oct. 21, 1970). Less elaborate disclosures may also suffice.[39]

Certain practices, however, are unlikely to deceive consumers acting reasonably. Thus, the Commission generally will not bring advertising cases based on subjective claims (taste, feel, appearance, smell) or on correctly stated opinion claims if consumers understand the source and limitations of the opinion.[40] Claims phrased as opinions are actionable, however, if they are not honestly held, if they misrepresent the qualifications of the holder or the basis of his opinion or if the recipient reasonably interprets them as implied statements of fact.[41]

The Commission generally will not pursue cases involving obviously exaggerated or puffing representations, *i.e.*, those that the ordinary consumers do not take seriously.[42] Some exaggerated claims, however, may be taken seriously by consumers and are actionable. For instance, in rejecting a respondent's argument that use of the words "electronic miracle" to describe a television antenna was puffery, the Commission stated:

> Although not insensitive to respondent's concern that the term miracle is commonly used in situations short of changing

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[39] *Chicago Metropolitan Pontiac Dealers' Ass'n*, C. 3110 (June 9, 1983).

[40] An opinion is a representation that expresses only the belief of the maker, without certainty, as to the existence of a fact, or his judgement as to quality, value, authenticity, or other matters of judgement. American Law Institute, *Restatement on Torts, Second* ¶ 538 A.

[41] *Id.* ¶ 539. At common law, a consumer can generally rely on an expert opinion. *Id.* ¶ 542(a). For this reason, representations of expert opinion will generally be regarded as representations of fact.

[42] "[T]here is a category of advertising themes, in the nature of puffing or other hyperbole, which do not amount to the type of affirmative product claims for which either the Commission or the consumer would expect documentation." *Pfizer, Inc.*, 81 F.T.C. 23, 64 (1972).

"The term 'puffing' refers generally to an expression of opinion not made as a representation of fact. A seller has some latitude in puffing his goods, but he is not authorized to misrepresent them or to assign to them benefits they do not possess [cite omitted]. Statements made for the purpose of deceiving prospective purchasers cannot properly be characterized as mere puffing." *Wilmington Chemical*, 69 F.T.C. 828, 865 (1966).

water into wine, we must conclude that the use of "electronic miracle" in the context of respondent's grossly exaggerated claims would lead consumers to give added credence to the overall suggestion that this device is superior to other types of antennae. Jay Norris, 91 F.T.C. 751, 847 n.20 (1978), aff'd, 598 F.2d 1244 (2d Cir.), cert. denied, 444 U.S. 980 (1979).

Finally, as a matter of policy, when consumers can easily evaluate the product or service, it is inexpensive, and it is frequently purchased, the Commission will examine the practice closely before issuing a complaint based on deception. There is little incentive for sellers to misrepresent (either by an explicit false statement or a deliberate false implied statement) in these circumstances since they normally would seek to encourage repeat purchases. Where, as here, market incentives place strong constraints on the likelihood of deception, the Commission will examine a practice closely before proceeding.

In sum, the Commission will consider many factors in determining the reaction of the ordinary consumer to a claim or practice. As would any trier of fact, the Commission will evaluate the totality of the ad or the practice and ask questions such as: how clear is the representation? how conspicuous is any qualifying information? how important is the omitted information? do other sources for the omitted information exist? how familiar is the public with the product or service?[43]

IV. THE REPRESENTATION, OMISSION OR PRACTICE MUST BE MATERIAL

The third element of deception is materiality. That is, a representation, omission or practice must be a material one for deception to occur.[44] A "material" misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product.[45] In other words, it is information that is important to consumers. If inaccurate or omitted information is material, injury is likely.[46]

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[43] In Avalon Industries, the ALJ observed that the "'ordinary person with a common degree of familiarity with industrial civilization' would expect a reasonable relationship between the size of package and the size of quantity of the contents. He would have no reason to anticipate slack filling." 83 F.T.C. 1728, 1750 (1974) (I.D.).

[44] "A misleading claim or omission in advertising will violate Section 5 or Section 12, however, only if the omitted information would be a material factor in the consumer's decision to purchase the product." American Home Products Corp., 98 F.T.C. 136, 368 (1981), aff'd, 695 F.2d 681 (3d Cir. 1982). A claim is material if it is likely to affect consumer behavior. "Is it likely to affect the average consumer in deciding whether to purchase the advertised product -- is there a material deception, in other words?" Statement of Basis and Purpose, Cigarette Advertising and Labeling Rule, 1965, pp. 86-87. 29 Fed. Reg. 8325 (1964).

The Commission considers certain categories of information presumptively material.[47] First, the Commission presumes that express claims are material.[48] As the Supreme Court stated recently, "[i]n the absence of factors that would distort the decision to advertise, we may assume that the willingness of a business to promote its products reflects a belief that consumers are interested in the advertising."[49] Where the seller knew, or should have known, that an ordinary consumer would need omitted information to evaluate the product or service, or that the claim was false, materiality will be presumed because the manufacturer intended the information or omission to have an effect.[50]

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[45] Material information may affect conduct other than the decision to purchase a product. The Commission's complaint in Volkswagen of America, 99 F.T.C. 446 (1982), for example, was based on provision of inaccurate instructions for oil filter installation. In its Restatement on Torts, Second, the American Law Institute defines a material misrepresentation or omission as one which the reasonable person would regard as important in deciding how to act, or one which the maker knows that the recipient, because of his or her own peculiarities, is likely to consider important. Section 538(2). The Restatement explains that a material fact does not necessarily have to affect the finances of a transaction. "There are many more-or-less sentimental considerations that the ordinary man regards as important." Comment on Clause 2(a)(d).

[46] In evaluating materiality, the Commission takes consumer preferences as given. Thus, if consumers prefer one product to another, the Commission need not determine whether that preference is objectively justified. See Algoma Lumber, 291 U.S. 54, 78 (1933). Similarly, objective differences among products are not material if the difference is not likely to affect consumer choices.

[47] The Commission will always consider relevant and competent evidence offered to rebut presumptions of materiality.

[48] Because this presumption is absent for some implied claims, the Commission will take special caution to ensure materiality exists in such cases.

[49] Central Hudson Gas & Electric Co. v. PSC, 447 U.S. 557, 567 (1980).

[50] Cf. Restatement on Contracts, Second ¶ 162(1).

Similarly, when evidence exists that a seller intended to make an implied claim, the Commission will infer materiality.[51]

The Commission also considers claims or omissions material if they significantly involve health, safety, or other areas with which the reasonable consumer would be concerned. Depending on the facts, information pertaining to the central characteristics of the product or service will be presumed material. Information has been found material where it concerns the purpose,[52] safety,[53] efficacy,[54] or cost[55] of the product or service.

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[51] In American Home Products, the evidence was that the company intended to differentiate its products from aspirin. "The very fact that AHP sought to distinguish its products from aspirin strongly implies that knowledge of the true ingredients of those products would be material to purchasers." American Home Products, 98 F.T.C. 136, 368 (1981), aff'd, 695 F.2d 681 (3d. Cir. 1982).

[52] In Fedders, the ads represented that only Fedders gave the assurance of cooling on extra hot, humid days. "Such a representation is the raison d'etre for an air conditioning unit -- it is an extremely material representation." 85 F.T.C. 38, 61 (1975) (I.D.), petition dismissed, 529 F.2d 1398 (2d Cir.), cert. denied, 429 U.S. 818 (1976).

[53] "We note at the outset that both alleged misrepresentations go to the issue of the safety of respondent's product, an issue of great significance to consumers." Firestone, 81 F.T.C. 398, 456 (1972), aff'd, 481 F.2d 246 (6th Cir.), cert. denied, 414 U.S. 1112 (1973).

[54] The Commission found that information that a product was effective in only the small minority of cases where tiredness symptoms are due to an iron deficiency, and that it was of no benefit in all other cases, was material. J.B. Williams Co., 68 F.T.C. 481, 546 (1965), aff'd, 381 F.2d 884 (6th Cir. 1967).

[55] As the Commission noted in MacMillan, Inc.:

> In marketing their courses, respondents failed to adequately disclose the number of lesson assignments to be submitted in a course. These were material facts necessary for the student to calculate his tuition obligation, which was based on the number of lesson assignments he submitted for grading. The nondisclosure of these material facts combined with the confusion arising from LaSalle's inconsistent use of terminology had the capacity to mislead students about the nature and extent of their tuition obligation. MacMillan, Inc., 96 F.T.C. 208, 303-304 (1980).

See also, Peacock Buick, 86 F.T.C. 1532, 1562 (1975), aff'd, 553 F.2d 97 (4th Cir. 1977).

Information is also likely to be material if it concerns durability, performance, warranties or quality. Information pertaining to a finding by another agency regarding the product may also be material.[56]

Where the Commission cannot find materiality based on the above analysis, the Commission may require evidence that the claim or omission is likely to be considered important by consumers. This evidence can be the fact that the product or service with the feature represented costs more than an otherwise comparable product without the feature, a reliable survey of consumers, or credible testimony.[57]

A finding of materiality is also a finding that injury is likely to exist because of the representation, omission, sales practice, or marketing technique. Injury to consumers can take many forms.[58] Injury exists if consumers would have chosen differently but for the deception. If different choices are likely, the claim is material, and injury is likely as well. Thus, injury and materiality are different names for the same concept.

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[56] *Simeon Management Corp.*, 87 F.T.C. 1184 (1976), *aff'd*, 579 F.2d 1137, 1168, n.10 (9th Cir. 1978).

[57] In *American Home Products*, the Commission approved the ALJ's finding of materiality from an economic perspective:

> If the record contained evidence of a significant disparity between the prices of Anacin and plain aspirin, it would form a further basis for a finding of materiality. That is, there is a reason to believe consumers are willing to pay a premium for a product believed to contain a special analgesic ingredient, but not for a product whose analgesic is ordinary aspirin. *American Home Products*, 98 F.T.C. 136, 369 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982).

[58] The prohibitions of Section 5 are intended to prevent injury to competitors as well as to consumers. The Commission regards injury to competitors as identical to injury to consumers. Advertising and legitimate marketing techniques are intended to "injure" competitors by directing business to the advertiser. In fact, vigorous competitive advertising can actually benefit consumers by lowering prices, encouraging product innovation, and increasing the specificity and amount of information available to consumers. Deceptive practices injure both competitors and consumers because consumers who preferred the competitor's product are wrongly diverted.

V. CONCLUSION

The Commission will find an act or practice deceptive if there is a misrepresentation, omission, or other practice, that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment. The Commission will not generally require extrinsic evidence concerning the representations understood by reasonable consumers or the materiality of a challenged claim, but in some instances extrinsic evidence will be necessary.

The Commission intends to enforce the FTC Act vigorously. We will investigate, and prosecute where appropriate, acts or practices that are deceptive. We hope this letter will help provide you and the public with a greater sense of certainty concerning how the Commission will exercise its jurisdiction over deception. Please do not hesitate to call if we can be of any further assistance.

By direction of the Commission, Commissioners Pertschuk and Bailey dissenting, with separate statements attached and with separate response to the Committee's request for a legal analysis to follow.

James C. Miller III
Chairman

DISSENTING STATEMENT OF COMMISSIONER PERTSCHUK CONCERNING THE COMMISSION'S STATEMENT ON DECEPTION

October 21, 1983

Of all the destructive, anticonsumer efforts this administration has pursued, none of them has been potentially more disastrous for the Federal Trade Commission and consumer protection enforcement than the attempt to change the law of deception. Had Chairman Miller's proposal to define "deceptive acts or practices" been enacted, the Commision would have been hamstrung by a series of evidentiary hurdles and new defenses in even simple misleading advertising cases. Fortunately, his efforts were met by Congress with an unenthusiastic yawn. A majority of the Commission, however, has now adopted a statement which purports to analyze the law of deception, but which actually adopts much of the Chairman's policy prescriptions for cutting back the Commission's authority to protect consumers. While this statement will be far less damaging to consumers than a permanent statutory change, it promises to foster a great deal of mischief until it can be corrected by some future Commission.

Before I comment on the substance of the statement, a word about the process by which the Commission issued this document is in order. A draft letter was forwarded to Commissioner Bailey and myself in the latter part of September for our comments. After we saw the draft statement, both Commissioner Bailey and I submitted extensive comments and expressed a willingness to explore a consensus statement of the law of deception. Rather than pursue the concededly tedious and difficult, but necessary, task of attempting to build a consensus, however, the Chairman insisted on finalizing on a statement on October 14, the last day of Commissioner Clanton's term. Insisting on final Commission action on a document of this significance while internal review and negotiations among offices are proceeding is inconsistent with sound administrative practice, the tradition of Commission decision-making and the new voting procedures recently adopted by the Commission at the Chairman's urging.

In addition to the inadequacies in the Commission's internal decision-making process, we should have allowed the public, particularly the State Attorneys General, to comment on our statement. In a telegram to Chairman Miller on October 14, the consumer protection subcommittee of the National Association of Attorneys General requested the opportunity to meet with the Commission and to comment before we released a final statement. We did not solicit public comment on our December 1980 Policy Statement on our "unfairness" jurisdiction, and in retrospect, it seems clear that we could have benefited from the views of those outside the Commission, particularly the Attorneys General, most of whom enforce statutes modeled after the FTC Act. The subsequent debate on the statutory proposal to define "unfairness" provided a good lesson about the AG's concerns. In the case of a "deception" statement, comment is even more appropriate because the concept of "deceptive practices" is at the core of the AG's consumer protection enforcement responsibilities. Commissioner Bailey and I voted to allow comment, Chairman Miller and Commissioner Douglas opposed it. Consequently, the motion to seek comment and to meet with representatives of the AG's failed 2-2.

As for the substance of the deception statement, it contains some discussion which appears to state the law correctly, but these statements are interspersed with propositions which are assertions about the way the Chairman wishes the law to be. To be sure, the statement is far better than the draft originally proposed because of revisions at the Commission level. However the statement remains internally inconsistent, confusing, and slipshod in use of legal precedent. Many of the key assertions have no legal citations because there are none; they are ideological propositions about the way the majority wants the law to be and little more. One will look in vain in Commission and court cases for phrases which seem to be used in the statement as reflecting well-established precedent.

Commissioner Bailey and I plan to cooperate in preparing a legal analysis of deception to forward to the Senate and House Commerce Committees as soon as possible, which will provide our analysis of the law and will point out more specifically the inadequacies in the majority statement. However, I summarize below my principal disagreements with majority's statement.

The statement concludes: "The Commission will find an act or practice deceptive if there is a misrepresentation, omission, or other practice that misleads the consumer acting reasonably in the circumstances, to the consumer's detriment." (p. 19) Not surprisingly, this language is nearly identical to the Chairman's proposed statutory definition which provided:

> A deceptive act or practice is a material representation that:
>
> (a) Is likely to mislead consumers, acting reasonably in the circumstances, to their detriment; or
>
> (b) the representor knew or should have known would be misleading. 1/

There is, of course, more than a little inconsistency in failing to persuade Congress that the law of deception should be changed, then concluding that the law was already the way the Chairman wanted it to be. In any event, the fundamental problems in the Chairman's initial proposal have been carried over into the deception statement.

The "Reasonable Consumer"

The courts have made clear that the Section 5 protects unsophisticated as well as "reasonable" consumers. The Supreme

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1/ Testimony of Chairman Miller before the Senate Committee on Commerce, Science, and Transportation, July 22, 1982, p. 4. The second part of the proposal, requiring a showing of negligence or intent, appears to be woven through the materiality discussion (see, e.g., p. 18) but it is not clearly stated.

Court in FTC v. Standard Education Society [2] reversed the court of appeals which had failed to uphold a Commission order on the grounds that consumers should have been smart enough not to be fooled. The Court's reasoning is a good summary of this aspect of the law of deception:

> The fact that a false statement may be obviously false to those who are trained and experienced does not protect its character, nor take away its power to deceive others less experienced. There is no duty resting on a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises and that the rule of caveat emptor should not be relied upon to reward fraud and deception. [3]

The Chairman's lament appears to be that the Commission goes too far in protecting the unsophisticated and the unsuspecting. There, of course, must be a limit on our ability to guard against every possible wrong interpretation of an advertising claim, and the Commission has recognized this. [4] The legitimate concern of advertisers, that the Commission will insist on interpretations of claims that are unrealistic, is addressed by our willingness to consider extrinsic evidence of consumers' understanding when there is a genuine factual dispute. But there is a marginal segment of American commercial life -- promoters of instant weight loss, bust creams, and baldness remedies; purveyors of quick fortunes in land speculation and pyramid schemes; sellers of miracle cancer cures -- which exists only because there are unsophisticated consumers. To introduce into the law the idea that the trusting don't deserve protection is "deregulation" in its most reckless and pointless form.

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[2] 302 U.S. 112 (1937).

[3] Id. at 116.

[4] "A representation does not become 'false and deceptive' merely because it will be unreasonably understood by an insignificant and unrepresentative segment of the class of persons to whom the representation is addressed." Henry W. Kirchner, 63 F.T.C. 1282, 1290 (1963).

Materiality and Injury

Without a doubt the most harmful part of Chairman Miller's legislative proposal was the idea of requiring the Commission to prove actual substantial injury before a law violation could be found. The Chairman pointed to this supposed gap in the law as the culprit which allowed the Commission to stop Block Drug from falsely claiming its denture cream would allow denture wearers to eat tough foods without embarrassment. 5/ Perhaps sensing that his proposal tended to unnerve Congressional audiences, Chairman Miller and his staff's explanations of the injury requirement had a chameleon-like quality, changing depending on potential criticism of the result. The fundamental flaw in the proposal, however, was the concept that the Commission had to prove actual, substantial injury -- a change in the law that would 1) make legal limited injury, 2) hamstring the Commission in preventing injury that had not yet occurred, and 3) introduce complex evidentiary problems in stopping even clearly misleading advertisements.

The law is quite clear that actual deception need not have occurred in order to stop a deceptive practice. 6/ This absence of a requirement to prove actual injury is the basis of the long recognized principle that the Commission need only find that there is a "tendency or capacity to deceive" for deception to be actionable under Section 5. 7/ The law requires that deception can be found only if the consumer is misled in a "material" way,

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5/ See Block Drug Co., 190 F.T.C. 893 (1977) and Chairman Miller's testimony, cited above, at p. 37.

6/ "It is not necessary . . . for the Commission to find that actual deception resulted. It is sufficient to find that the natural and probable result of the challenged practice is to cause one to do that which he would not do otherwise." Bockenstette v. FTC, 134 F.2d 369 (10th Cir. 1943).

7/ See Charles of the Ritz v. FTC, 143 F.2d 676 (2d Cir. 1944).

but the concept of "materiality" has meant that the information which is the subject of the misrepresentation or omission is likely to matter to consumers. As the Commission stated in the Statement of Basis and Purpose for the Cigarette Rule: "Is it likely to affect the average consumer in deciding whether to purchase the advertised product -- is there a material deception, in other words?" 8/

The majority statement does refer to "likely" rather than "actual" injury. Yet, one will find no reference to "tendency or capacity to deceive" anywhere in the statement. Moreover, there is the remarkable assertion that "injury and materiality are different names for the same concept." Finally, in the summary statement on p. 20, the majority restates the Chairman's legislative proposal which even he admits changes the result in some past cases. (see p. 20) This propensity to stuff round legal cases in square ideological holes is a recurring theme of the statement but nowhere more significant than on this issue.

There are a host of lesser problems in the statement as well. For example, one statement appears to write off the idea that a seller may be found liable for a deceptive omission even in the absence of an affirmative misrepresentation (see footnote 4, especially the last sentence beginning on p. 2). Later, however, the majority cites the Cigarette Rule Statement in fn. 9, p. 6, which makes clear that a seller has an obligation to correct a false impression even if it is not caused by affirmative representations. There are also occasional and vague references to the need for extrinsic evidence on various issues (e.g., pp. 5, 7) which threaten to increase the evidentiary complexity of cases and make it exceedingly difficult to establish even common sense factual conclusions.

With more work and a more faithful adherence to the law, the statement could have been useful. As it stands, however, it is a

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8/ 29 Fed. Reg. 8325 (1964), pp. 86-87.

combination of correct statements of legal principles and assertions about the way the Chairman wants the law to be. Thus, much of the problem with the statement is internal inconsistency. The overriding problem, however, is that the drafters wanted to push the law in a new direction, one that would make it harder for the Commission to act and loosen the reins on dishonesty and unscrupulous behavior.

DISSENTING STATEMENT OF COMMISSIONER PATRICIA P. BAILEY CONCERNING THE COMMISSION'S STATEMENT ON DECEPTION

OCTOBER 21, 1983

Last year, the House Committee on Energy and Commerce requested that the Commission prepare and submit "an analysis of its deception jurisdiction as presently applied by the Commission and interpreted in case law." One month ago, on September 16, 1983, the Chairman circulated to the members of the Commission a draft statement in response to that request. That statement, which the Committee is receiving today in the form of a letter addressed to Chairman Dingell from Chairman Miller, is an ill-conceived and frankly radical attempt to change the law of deception and to create new and restrictive legal standards which would constrain the Commission's traditional and important law enforcement activities. Chairman Miller's letter is a confusing combination of law and policy rather than an analysis of the law of deception and as such is not responsive to the Committee's request. I have dissented from its issuance and am preparing, together with Commissioner Pertschuk, a separate and responsive legal analysis which will be forwarded to the Committee shortly.

As a preliminary matter, I regret the manner in which this statement was rushed to a premature decision. It is being released to the Committee without the benefit of thorough, thoughtful consideration, without much-needed revisions and without comment from the state Attorneys General who urgently requested an opportunity to comment before the document was put into final form.

The way this matter was handled stands in stark contrast to the lengthy and careful process which was followed when the Commission undertook the analysis of "unfairness" over three years ago. The resulting document in that case was six months in the drafting and was the subject of countless staff and Commissioner negotiations and two Commission meetings. The result, as the Committee knows, was a unanimous statement of the Commission's view of its authority under the "unfairness" law. In this case, two-week old negotiations with my office which were on the point we thought of achieving some significant revisions to the statement were suddenly terminated. A new draft of the statement was circulated for a vote late in the day October 14, 1983. It immediately received three votes, including that of a Commissioner whose term of office ended on that day. It is distressing that a document so central and so important to the Commission's future work was rushed to premature decision and release.

In my view the document the Committee receives today is totally inadequate and, indeed, an embarrassing effort to analyze and discuss a substantial body of Commission law. Sweeping generalizations in the statement are unsupported. Assertions purporting to derive from established precedent are misread, misstated, or presented in a disingenuous fashion. Serious inconsistencies appear throughout the document, while landmark cases, including decisions of the United States Supreme Court, are entirely ignored.

Moreover, the statement rewrites fundamental concepts of the law in a way that would raise to new and extreme levels the burden the Commission faces in prosecuting law violators. The principles it describes bear a distinct resemblance to the proposed statutory definition of deception which Chairman Miller has offered and which he has acknowledged was intended to alter the law of deception. It is a source of no small concern to me that this statement could be used to deprive consumers of the protection accorded to them under the Commission's statute and by forty-five years of Commission and judicial precedent. I highlight below some important examples of its shortcomings and inadequacies.

The majority statement summarizes legal deception as a three part formula: it asserts that deception consists of a representation, omission or practice that (1) is likely to mislead consumers (2) acting reasonably (3) to their detriment.[1] As a statement of the existing standard, this three part test is clearly flawed. Each of these parts misstates the law.[2]

The first element, as it now stands, creates confusion. T Commission and the courts have through the years asked whether an act or practice had the tendency or capacity to mislead consumers before finding deception.[3] This statement substitutes for that concept the *likelihood* that the act or practice will mislead consumers. Without explanation, one is left to wonder whether these two perhaps similar ideas are indeed the same, and if so why the traditional "tendency or capacity" phrasing was not used. On the other hand if the "likelihood" standard is intended to describe a different standard, is it a higher or a lower standard? If higher, or more restrictive, then the statement should but does not contain any reference to conduct the Commission apparently can now but would be unable to reach under an elevated standard.

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[1] *See* Letter from Chairman James C. Miller III to Hon. John D. Dingell at 4, 19 (Oct. 14, 1983).

[2] A more accurate summary of the law of deception would provide instead that a representation, omission or practice is deceptive, and violates Section 5 of the Federal Trade Commission Act, if it has a tendency or capacity to mislead substantial numbers of consumers and it is material to consumers.

[3] *See* U.S. Retail Credit Ass'n v. FTC, 300 F.2d 212, 221 (4th Cir. 1962); Bockenstette v. FTC, 134 F.2d 369, 371 (10th Cir. 1934); American Home Products Corp., 98 F.T.C. 136, 387 & n. 54 (1981), *aff'd*, 695 F.2d 681 (3d Cir. 1982); Firestone Tire & Rubber Co., 81 F.T.C. 398, 450-51 (1972), *aff'd*, 481 F.2d 246 (6th Cir.), *cert. denied*, 414 U.S. 1112 (1973).

Proceeding through the document does not dispel the confusion. In elaborating on the first element of this new definition the statement describes a "misrepresentation" as an express or implied statement contrary to fact. How will that definition affect cases involving half-truths, or literal truths presented in a misleading fashion? What about claims that employ entirely accurate but unrepresentative statistics or test results? Consider also the "bait" in a "bait and switch" promotion or the pitch in a high pressure sales presentation, both of which commonly involve factually accurate statements. I do not doubt that agile minds will be able to fit these situations into the statement's construct, but I question the wisdom of requiring that effort and risking the elimination from the Commission's reach of a long list of heretofore deceptive practices.

The second element of this new definition of deception is even more troubling. The Commission and the courts have traditionally ruled that an act or practice may be deceptive even if it does not mislead sophisticated or wary consumers.[4] The statement contained in the Chairman's letter, however, would limit the Commission's reach to those cases involving deception of "reasonable" consumers, a concept otherwise undefined. I have asked before and must ask again: Is it "reasonable" to buy undeveloped land sight unseen? Is it "reasonable" for a consumer to permit him or herself to be baited and switched to a more expensive product than he or she went into a store to buy? Is it "reasonable" to rely on oral representations in transactions involving large sums of money when written contracts deny or disclaim any oral misrepresentations? Different minds might reach different answers to these questions. Yet the Commission has traditionally chosen to protect consumers in these circumstances. Moreover, it is not at all clear to me that some of the most recent lawsuits initiated by a unanimous Commission could meet the "reasonableness" standard created by this definition. I foresee a great harm to the public interest if this standard prevents the Commission from continuing important work that has in the past resulted in numerous lawsuits on behalf of literally thousands of injured consumers and substantial monetary redress.[5]

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[4] See FTC v. Standard Educ. Soc., 302 U.S. 112, 115-16 (1937); Aronberg v. FTC, 132 F.2d 165, 167 (7th Cir. 1942); Sun Oil Co., 84 F.T.C. 247, 270 (1974); New York Jewelry Co., 74 F.T.C. 1361, 1406 (1968), aff'd sub nom. Tashof v. FTC, 437 F.2d 707 (D.C. Cir. 1970).

Scholars familiar with the law of deception will undoubtedly be surprised at the omission from this portion of the statement of any mention of the seminal Supreme Court case, *FTC v. Standard Education Society*.[6] At issue there was the deceptive nature of price claims made to prospective purchasers of encyclopedias and the Commission's ability to protect consumers from clearly misleading practices. The Court of Appeals found that consumers would not be "fatuous enough to be misled" by the claims, and dismissed the case. The Supreme Court reversed this ruling, holding that "the fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced."[7] It is interesting and perhaps revealing to note that the standard the Supreme Court *reversed* in that case virtually parallels the standard this statement cites as a necessary element of deception.

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[5] *See*, *e.g.*, Horizon Corp., 97 F.T.C. 464, 839 (1981) (deceptive land sales); Seekonk Freezer Meats, Inc., 82 F.T.C. 1025, 1055 (1973) (deceptive advertising in sale of meat and meat products); Lear Siegler, Inc., 86 F.T.C. 860 (1975) (deceptive advertising for vocational school); Koscot Interplanetary, Inc., 86 F.T.C. 1106, 1180 (1975) (deceptive "pyramid" sales and recruitment), *modified*, 87 F.T.C. 75 (1976); New York Jewelry Co., 74 F.T.C. 1361 (1968), *aff'd sub nom.* Tashof v. FTC, 437 F.2d 707 (D.C. Cir. 1970).

[6] 302 U.S. 112 (1937).

[7] *Id*. at 115-16.

The third and final element of the new deception definition suggests that an act or practice is deceptive only if it is material. Material acts or practices are those that are likely to affect a consumer's conduct, including conduct other than the consumer's decision to purchase a product, as the statement correctly notes.[8] Yet the statement equates materiality and injury, suggesting that actual injury must be shown before a finding of materiality is made. This proposition is inconsistent not only with other portions of the statement, but also with a substantial body of law holding that the Commission need not show actual injury or prejudice to consumers in order to find an act or practice material.[9]

Actual injury as a prerequisite to a finding of deception is bad policy as well as bad law. This standard could in my view severely and unacceptably narrow the Commission's advertising substantiation doctrine. If actual injury is a necessary element of every case, the Commission might have to prove that a claim is not simply unsubstantiated but false as well, since the Commission might be unable to establish that an unsubstantiated claim--one lacking a reasonable basis but not demonstrably false--has caused the kind of concrete harm or detriment that is suggested by the injury-materiality standard contained in the statement. It would be truly unconscionable were such a result to occur as the by-product of haste.

I have dissented from the publication of the attached statement because I can see no benefit to the Committee on Energy and Commerce, to the Federal Trade Commission, or to the public from its release. Rather than clarifying for the Committee the law of deception, the statement writes new law that is destined to confuse and confound its readers. The three part definition of deception, if applied literally, could substantially narrow the Commission's authority to prosecute a wide range of dishonest and deceptive conduct, while creating enormous complications and uncertainty about the legitimacy of those cases we do bring.

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[8] See Letter from Chairman James C. Miller III to Hon. John D. Dingell at 16-17 (Oct. 14, 1983).

[9] See FTC v. Colgate-Palmolive Co., 380 U.S. 374, 391-92 (1965); Litton Indus., Inc., 97 F.T.C. 1, 39-40 (1981), aff'd as modified, 676 F.2d 364 (9th Cir. 1982); Firestone Tire & Rubber Co., 81 F.T.C. 398, 451 (1972), aff'd, 481 F.2d 246 (6th Cir.), cert. denied, 414 U.S. 1112 (1973).

The Commission's statutory authority to police the marketplace against deceptive acts or practices has been virtually untouched in forty-five years. Court decisions throughout that period have been remarkably consistent. Commissioner Pertschuk and I have undertaken a joint effort to provide the Committee with an analysis of the law of deception which assesses as accurately as possible this comprehensive and stable body of law. We will transmit it to the Committee shortly.

CONCURRING STATEMENT OF COMMISSIONER GEORGE W. DOUGLAS CONCERNING THE COMMISSION'S STATEMENT ON DECEPTION
October 21, 1983

Today the Federal Trade Commission will send to members of the House and Senate a statement clarifying the way in which it will enforce its mandate to prevent deceptive acts or practices. The statement is the result of considerable effort and months of consultation within the Commission. The results demonstrate the care with which this document was prepared. It distills the best of past Commission case precedent and theory into three easy-to-apply conditions which in future must be met for the Commission to find that acts or practices are deceptive. There must be:

(1) A representation, omission, or practice which

(2) from the perspective of a reasonable consumer,

(3) is material, i.e., likely to mislead the consumer to his or her detriment.

The statement will benefit both consumers and the business community by providing a specific source of guidance as to what conduct is permissible in advertising and similar activities.

Unfortunately, the deception statement has not received unanimous support within the Commission. Instead, two Commissioners have made clear that they will attempt to portray it as a hurried effort to cut back on the Federal Trade Commission's consumer protection role. That attempt to mischaracterize the deception statement deserves some response.

The core of this charge is a claim that the "reasonable consumer" standard will make it harder to attack deception aimed at specially vulnerable consumers. This is not the case. On the contrary, the deception statement makes clear that:

> "When representation or sales practices are targeted to a specific audience, such as children, the elderly or the terminally ill, the Commission determined the effect of the practice on a reasonable member of that group." (Statement, p. 9.)

The purpose of the reasonable consumer standard is simply to ensure that the Commission does not prevent most consumers from hearing useful information because an unrepresentative minority misunderstand it. As an earlier Commission case put it: "Perhaps a few misguided souls believe, for example, that all 'Danish pastry' is made in Denmark. Is it therefore an actionable deception to advertise 'Danish pastry' when it is made in this country? Of course not." 1/

It's hard to believe that even a minority of the Commission wants the ability to test advertisements by the standard of an unreasonable consumer. It's even harder to believe that such an "unreasonable consumer" standard will benefit the American public in the long run. Rather, it will allow members of the Commission to block useful advertising at their whim and whimsy, as long as they can argue that a few

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1/ Heinz W. Kirchner, 63 F.T.C. 1282, 1290 (1963).

people somewhere might misunderstand it. This is the same misguided approach to consumer protection which prohibited a manufacturer from claiming its hair coloring product was permanent on the theory that some consumers might believe it would color hair that had not yet grown out. 2/ I will concede that such a standard imposes the least possible restraint upon the Commission -- essentially none. However, this is a situation where self-restraint is called for.

The other charge leveled at the deception statement is that it was rushed through without enough internal dialogue. The same Commissioners whose substantive positions were diametrically opposed to the reasonable consumer standard nonetheless requested that the fruitless internal discussion over it should continue for at least a little while longer.

Outsiders may wonder at such a paradoxical position. As it happens, however, the deception statement was voted for on the last day of the term of office of departing Commissioner David Clanton. Commissioner Clanton, an appointee of President Ford, supported the deception statement and desired to vote on it. His endorsement demonstrates as clearly as anything can that the statement is not a radical departure from past Commission precedent.

Similar failed attempts to obtain a tactical advantage are par for the course among Washington bureaucrats and politicians. But they should be recognized for what they are. In this case, those supporting an unreasonable consumer standard for deception never suggested during a month of strenuous discussion at the Commission level that they were willing to compromise on this point. After-the-fact claims that continued discussion might have bridged the gap simply are not believable.

2/ Gelb, 33 F.T.C. 1450 (1941), aff'd. as modified, 144 F.3d 580 (2d Cir. 1944).

There is much else I could say about the deception statement and the opposition to it. I am sure that the various issues surrounding the statement will be aired fully in coming weeks and months and therefore need not be dealt with by me now. However, there is one additional point which I feel should be made at this time. The controversy now surrounding the deception statement bears out Chairman Miller's past observations that FTC law on deception has been confused. Our action today is a positive step toward removing that confusion. It should not be the only one. I continue to support an amendment of Section 5 to define deception acts and practices. The controversy surrounding our deception statement lends further weight to the argument that such statutory redefinition is necessary.

EXHIBIT B

FTC POLICY STATEMENT REGARDING ADVERTISING SUBSTANTIATION

Introduction

On March 11, 1983, the Commission published a notice requesting comments on its advertising substantiation program.[1] To facilitate analysis of the program, the notice posed a number of questions concerning the program's procedures, standards, benefits, and costs, and solicited suggestions for making the program more effective. Based on the public comments and the staff's review, the Commission has drawn certain conclusions about how the program is being implemented and how it might be refined to serve better the objective of maintaining a marketplace free of unfair and deceptive acts or practices. This statement articulates the Commission's policy with respect to advertising substantiation.

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[1] 48 Fed. Reg. 10471, March 11, 1983.

The Reasonable Basis Requirement

First, we reaffirm our commitment to the underlying legal requirement of advertising substantiation -- that advertisers and ad agencies have a reasonable basis for advertising claims before they are disseminated.

The Commission intends to continue vigorous enforcement of this existing legal requirement that advertisers substantiate express and implied claims, however conveyed, that make objective assertions about the item or service advertised. Objective claims for products or services represent explicitly or by implication that the advertiser has a reasonable basis supporting these claims. These representations of substantiation are material to consumers. That is, consumers would be less likely to rely on claims for products and services if they knew the advertiser did not have a reasonable basis for believing them to be true.[2] Therefore, a firm's failure to possess and rely upon a reasonable basis for objective claims constitutes an unfair and deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act.

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[2] Nor presumably would an advertiser have made such claims unless the advertiser thought they would be material to consumers.

Standards for Prior Substantiation

Many ads contain express or implied statements regarding the amount of support the advertiser has for the product claim. When the substantiation claim is express (*e.g.*, "tests prove", "doctors recommend", and "studies show"), the Commission expects the firm to have at least the advertised level of substantiation. Of course, an ad may imply more substantiation than it expressly claims or may imply to consumers that the firm has a certain type of support; in such cases, the advertiser must possess the amount and type of substantiation the ad actually communicates to consumers.

Absent an express or implied reference to a certain level of support, and absent other evidence indicating what consumer expectations would be, the Commission assumes that consumers expect a "reasonable basis" for claims. The Commission's determination of what constitutes a reasonable basis depends, as it does in an unfairness analysis, on a number of factors relevant to the benefits and costs of substantiating a particular claim. These factors include: the type of claim, the product, the consequences of a false claim, the benefits of a truthful claim, the cost of developing substantiation for the claim, and the amount of substantiation experts in the field believe is reasonable. Extrinsic evidence, such as expert testimony or consumer surveys, is useful to determine what level of substantiation consumers expect to support a particular product claim and the adequacy of evidence an advertiser possesses.

One issue the Commission examined was substantiation for implied claims. Although firms are unlikely to possess substantiation for implied claims they do not believe the ad makes, they should generally be aware of reasonable interpretations and will be expected to have prior substantiation for such claims. The Commission will take care to assure that it only challenges reasonable interpretations of advertising claims.[3]

Procedures for Obtaining Substantiation

In the past, the Commission has sought substantiation from firms in two different ways: through industry-wide "rounds" that involved publicized inquiries with identical or substantially similar demands to a number of firms within a targeted industry or to firms in different industries making the same type of claim; and on a case-by-case basis, by sending specific requests to individual companies under investigation. The Commission's review indicates that "rounds" have been costly to both the recipient and to the agency and have produced little or no law enforcement benefit over a case-by-case approach.

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[3] Individual Commissioners have expressed differing views as to how claims should be interpreted so that advertisers are not held to outlandish or tenuous interpretations. Notwithstanding these variations in approach, the focus of all Commissioners on reasonable interpretations of claims is intended to ensure that advertisers are not required to substantiate claims that were not made.

The Commission's traditional investigatory procedures allow the staff to investigate a number of firms within an industry at the same time, to develop necessary expertise within the area of investigation, and to announce our activities publicly in circumstances where public notice or comment is desirable. The Commission intends to continue undertaking such law enforcement efforts when appropriate. However, since substantiation is principally a law enforcement tool and the Commission's concern in such investigations is with the substantiation in the advertiser's possession, there is little, if any, information that the public could contribute in such investigations. Therefore, the Commission anticipates that substantiation investigations will rarely be made public before they are completed.

Accordingly, the Commission has determined that in the future it will rely on nonpublic requests for substantiation directed to individual companies an informal access letter or, if necessary, a formal civil stigative demand. The Commission believes that tailored, firm-specific requests, whether directed to one firm or to several firms within the same industry, are a more efficient law enforcement technique. The Commission cannot presently foresee circumstances under which the past approach of industry-wide rounds would be appropriate in the ad substantiation area.

Relevance of Post-Claim Evidence in Substantiation Cases

The reasonable basis doctrine requires that firms have substantiation before disseminating a claim. The Commission has on occasion exercised its discretion, however, to consider supporting materials developed after dissemination.[4] The Commission has not previously identified in one document the circumstances in which it may, in its discretion, consider post-claim evidence in substantiation cases.[5] Such guidance can serve to clarify the program's actual operation as well as focus consideration of post-claim evidence on cases in which it is appropriate.

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[4] The Commission's evidentiary rule, 16 C.F.R. §3.40, has sometimes been interpreted as precluding introduction of post-claim substantiation. In fact, it does not. Section 3.40 only provides a sanction against the introduction of evidence that should have been produced in response to a subpoena, but was not.

[5] The distinction between pre-claim and post-claim evidenc only relevant when the charge is lack of substantiation. Fo. other charges, such as falsity, when evidence was developed is irrelevant to its admissibility at trial.

The Commission emphasizes that as a matter of law, firms lacking a reasonable basis before an ad is disseminated violate Section 5 of the FTC Act and are subject to prosecution. The goal of the advertising substantiation requirement is to assure that advertising is truthful, however, and the truth or falsity of a claim is always relevant to the Commission's deliberations. Therefore, it is important that the agency reta the discretion and flexibility to consider additional substantiating evidence, not as a substitute for an advertiser's prior substantiation, but rather in the following circumstances:

- When deciding, before issuance of a complaint, whether there is a public interest in proceeding against a firm;
- When assessing the adequacy of the substantiation an advertiser possessed before a claim was made; and
- When deciding the need for or appropriate scope of an order to enter against a firm that lacked a reasonable basis prior to disseminating an advertisement.

First, using post-claim evidence to evaluate the truth of a claim, or otherwise using such evidence in deciding whether there is a public interest in continuing an investigation or issuing a complaint, is appropriate policy. This does not mean that the Commission will postpone action while firms create post-claim substantiation to prove the truthfulness of claims, nor does it mean that subsequent evidence of truthfulness absolves a firm of liability for failing to possess prior substantiation for a claim. The Commission focuses instead on whether existing evidence that claims are true should lead us in the exercise of our prosecutorial discretion to decline to initiate a law enforcement proceeding. If available post-claim evidence proves that the claim is true, issuing a complaint against a firm that may have violated the prior substantiation requirement is often inappropriate, particularly in light of competing demands on the Commission's resources.

Second, post-claim evidence may indicate that apparent deficiencies in the pre-claim substantiation materials have no practical significance. In evaluating the adequacy of prior substantiation, the Commission will consider only post-claim substantiation that sheds light on pre-existing substantiation. Thus, advertisers will not be allowed to create entirely new substantiation simply because their prior substantiation was inadequate.

Finally, the Commission may use post-claim evidence in determining the need for or appropriate scope of an order to be entered against a firm that lacked a reasonable basis. Thus, when additional evidence offered for the first time at trial suggests that the claim is true, the Commission may frame a narrower order than if there had been no post-claim evidence.

The Commission remains committed to the prior substantiation requirement and further believes that these discretionary factors will provide necessary flexibility. The Commission will consider post-claim evidence only in the circumstances listed above. But, whether it will do so in any particular case remains within its discretion.

Self Regulation Groups and Government Agencies

The Commission traditionally has enjoyed a close working relationship with self-regulation groups and government agencies whose regulatory policies have some bearing on our law enforcement initiatives. The Commission will not necessarily defer, however, to a finding by a self-regulation group. An imprimatur from a self-regulation group will not automatically shield a firm from Commission prosecution, and an unfavorable determination will not mean the Commission will automatically take issue, or find liability if it does. Rather the Commission defer, however, to a finding by a self-regulation group. An imprimatur from a self-regulation group will not automatically shield a firm from Commission prosecution, and an unfavorable determination will not mean the Commission will automatically take issue, or find liability if it does. Rather the Commission will make its judgment independently, evaluating each case on its merits. We intend to continue our useful relationships with self-regulation groups and to rely on the expertise and findings of other government agencies in our proceedings to the greatest extent possible.

By direction of the Commission.

Emily H. Rock
Secretary

QUESTION: If the FTC decides to take action against a claim, what can the FTC do (fines, injunctions)?

ANSWER: The FTC can, after an administrative proceeding or with the consent of the respondent, enter a cease and desist order. Once such an order becomes final, civil penalties may be levied for any future violations of that order. If the initial claims are dishonest or fraudulent, the FTC may also seek consumer redress. In addition, in proper cases the Commission can seek an injunction in court to stop immediately the further dissemination of the unlawful advertising.

QUESTION: What types of products and claims is the FTC investigating?

ANSWER: The FTC is investigating a variety of products, including plastic disposable diapers, trash bags, additives for plastic products, grocery bags, aerosol sprays for various uses, and other paper products. Claims under review include assertions that products are degradable, biodegradable, photodegradable, CFC free, ozone friendly, environmentally safe, environmentally friendly, recycled, and recyclable.

QUESTION: How much money is the FTC requesting for this effort in FY 92 and how many people would be assigned to this task?

ANSWER: The FTC is funding its environmental marketing investigations as part of its general advertising program. Seventy-four work years for the general advertising program, including the regional offices, have been requested for FY92. The FTC currently has five attorneys and two economists at headquarters working on environmental cases on a full- or part-time basis.

In addition, staff at three regional offices are contributing on a part-time basis. In FY92 these resources in the general advertising program would be increased by two work years at headquarters and one work year in the regions, specifically to deal with environmental marketing.

QUESTION: What evidence does the FTC have concerning how extensively environmental marketing claims are being made regarding consumer products and packages and is the FTC seeing an increased use of such claims?

ANSWER: A number of polls indicate that environmental marketing claims are increasing in number. For instance, two studies found that in 1989, almost five percent of all new products made some kind of environmental benefit claim, a tenfold increase since 1984. This figure doubled to ten or eleven percent in 1990. See JWT Greenwatch, vol. 1, no. 2 (Autumn 1990), J. Walter Thompson USA, Inc.; "1990 Green Product Introductions Soar," Green MarketAlert, pp. 8-9, report of Marketing Intelligence Service, Ltd. (October 1990). In addition, the FTC received from First Brands Corporation a petition for guidelines that included a list of more than six dozen products making various environmental claims.

Environmental Marketing Claims Standards

QUESTION: Would environmental marketing claims standards assist the FTC in dealing with environmental marketing claims?

ANSWER: The FTC's overall goal in the area of environmental marketing claims is to enhance consumer choice by preventing advertisements and labels that communicate a deceptive impression of the environmental risks and benefits associated with products. In this respect, the Commission's environmental advertising program is no different than its general program to promote truthful advertising in the marketplace. The Commission ordinarily acts against deceptive marketing through case-by-case actions against deceptive or unsubstantiated claims. In some circumstances, guidelines can enhance this enforcement effort by clarifying deception principles as they apply generally and by spurring further voluntary compliance. However, FTC guides, unlike trade regulation rules, are not legally binding, and the Commission has to bring individual cases to enforce them. Guides also must be crafted to ensure that they do not inadvertently chill truthful claims, become obsolete, or otherwise curb incentives for technological innovation. Careful assessment of these risks is especially important in areas such as environmental claims that change rapidly due to technological innovation.

QUESTION: Will the FTC work with EPA in establishing environmental marketing guidelines and if so what is your schedule for establishing such guidelines?

ANSWER: The FTC has agreed to participate with EPA and the U.S. Office of Consumer Affairs in a joint task force to provide federal agency leadership and cooperation to reduce marketplace confusion resulting from environmental claims. The purpose of the task force is to develop national guidelines for the use of certain environmental terms. In addition, on February 14th the Commission received a petition to promulgate proposed guides from a group of ten trade associations. The Commission staff is reviewing the NFPA petition and hopes to forward a recommendation to the Commission shortly. If the Commission determines that industry guides are appropriate, the FTC staff will work closely with the EPA staff in developing such industry guides, just as it has worked with EPA staff in its current investigations.

QUESTION: Does the FTC have the expertise to establish environmental marketing claim standards on its own?

ANSWER: The FTC has the expertise to establish environmental marketing claims standards insofar as they relate to consumer protection and communication issues. In any action concerning environmental marketing, the Commission's goal would be to promote the dissemination to consumers of truthful and substantiated information concerning the environmental risks and benefits of the products they purchase. This approach leaves to manufacturers and consumers the decision as to which products to offer and purchase.

QUESTION: How many people on the FTC staff are experts in environmental policy?

ANSWER: The FTC staff assigned to this area consists of lawyers and economists who work closely with EPA staff. No one on the staff can be considered an expert in environmental policy. The Commission staff routinely relies on the expertise of other government agencies and outside experts in its investigations and law enforcement efforts. In its environmental investigations in particular, it is working closely with EPA staff and is relying on the expertise of that agency.

Environmental Marketing Claims Petition

QUESTION: What standard will the FTC use in determining whether to accept the petition filed by the National Food Processors Association and others for the FTC to establish environmental marketing guidelines?

ANSWER: The Commission's Rules provide, "Industry guides are promulgated by the Commission on its own initiative or pursuant to petition filed . . . when it appears to the Commission that guidance as to the legal requirements applicable to particular practices would be beneficial in the public interest and would serve to bring about more widespread and equitable observance of laws administered by the Commission. In connection with the promulgation of industry guides, the Commission at any time may conduct such investigations, make such studies, and hold any conferences or hearings as it may deem appropriate." Commission Rule 1.6, 16 C.F.R. § 1.6 (1990).

QUESTION: Would the FTC consider the impact that a product or package would have on the environment in setting a guideline or would the FTC solely consider whether the claim is deceptive?

ANSWER: The FTC Act does not authorize the Commission to regulate products or packaging solely based on their effect on the environment. Rather, the Commission is authorized to bring action against the marketing of products that misleads consumers or unduly restricts consumer choice. Therefore, merely because a product may have adverse environmental effects ordinarily is not sufficient to state a claim under the FTC Act. However, a product's effect on the environment can be relevant to the determination of whether a company's environmental claims were truthful.

QUESTION: When does the FTC expect to make a decision on whether to accept this petition?

ANSWER: Staff is now preparing its recommendation to the Commission concerning the petition.

QUESTION: The petition requests that guidelines be established for consumer packages. Does the FTC believe that guidelines also are necessary for environmental claims made for consumer products?

ANSWER: The Commission has not yet made a determination regarding the necessity for industry guidelines or the proper scope of any such guidelines. However, environmental claims for products certainly may be as material to consumers as claims for packaging, and there is no obvious reason to exclude product claims from the scope of any industry guidelines that may be adopted.

QUESTION: If the FTC decides to issue guidelines, what effect would this have on the role of states to adopt different or tougher environmental marketing claims standards?

ANSWER: FTC industry guides would not preclude the states from adopting different or more stringent standards. FTC guides might, however, have a legal effect in some states, because some state consumer protection statutes and court decisions defer to FTC actions as authority in interpreting state consumer protection statutes.[4]

QUESTION: In cases where the FTC has issued guidelines in the past, has the FTC issued the type of vague guidelines suggested in the petition or does the FTC establish specific, substantive and supportable guidelines as requested by the 10 state Task Force of State Attorneys General on Green Marketing?

ANSWER: Unlike trade regulation rules, which must define with specificity any prohibited acts or practices, Commission guides are general statements of enforcement policy under the FTC Act. The guides that the Commission has issued in the past have varied in specificity, depending upon the practices addressed and the variety of claims within their scope. See, e.g., Guides Against Deceptive Pricing, 16 C.F.R. Part 233 (1990); Guides Concerning the Use of Endorsements and Testimonials in Advertising, 16 C.F.R. Part 255 (1990); and Guides Concerning Fuel Economy Advertising for New Automobiles, 16 C.F.R. Part 259 (1990). The Commission will be holding public hearings on the need for environmental guides, and expects that issues regarding the proper format and degree of specificity of any such guidelines will be among the topics discussed.

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[4] See, e.g., American Bar Association, Section of Antitrust Law, "Reliance on FTC Consumer Protection Law Precedents in Other Legal Forums" at pp. 6, 9 (July 1, 1988).

Regulation of Marketing Claims

QUESTION: Does the FTC have sole jurisdiction over the regulation of marketing claims on products and packages?

ANSWER: No. The FTC shares jurisdiction with several other federal agencies, including the Food and Drug Administration ("FDA"), the U.S. Department of Agriculture ("USDA"), the Bureau of Alcohol, Tobacco and Firearms ("BATF"), the Environmental Protection Agency ("EPA"), and the Consumer Product Safety Commission ("CPSC").

QUESTION: If not, please describe the areas where other federal agencies are responsible for regulating marketing claims.

ANSWER: FDA. Under the Federal Food, Drug, and Cosmetic Act, the FDA regulates the labels and labeling for foods, drugs, devices, and cosmetics. What constitutes "labeling" can be construed very broadly, and may range from package labels to package inserts to brochures or other literature accompanying the product. In addition to labeling, the FDA also regulates prescription drug advertising. The "misbranding" of any product under the FDA's jurisdiction is prohibited. "Misbranding" occurs if the label is false or misleading in any particular. Misbranding can result in civil or criminal liability.

USDA. The USDA regulates labels and packaging for meat products such as beef, pork, and poultry. All labels are pre-approved by the USDA. In addition, the USDA is responsible for inspecting meats and processing facilities.

BATF. The BATF regulates labels for all alcoholic beverages. Such labels must be pre-approved by BATF. In addition, the BATF requires that all advertising for alcoholic products include the name of the responsible advertiser and the class or type of alcoholic product to which the beverage belongs. No advertising statements inconsistent with the labeling are permitted, and any label appearing in an ad must be a reproduction of the label as approved by the BATF.

EPA. The EPA regulates all pesticides and their labels. Each pesticide must be registered with the EPA before it can be marketed. "Misbranded" pesticides are prohibited. A pesticide is considered "misbranded" if the label bears any false or misleading statement, design, or graphic representation. Such misbranding can result in legal liability.

CPSC. The CPSC regulates certain consumer products. In particular, the CPSC is charged with protecting the public from unreasonable risks of injury associated with those products. The CPSC carries out its mission under a series of federal laws described below. Under the Consumer Product Safety Act, which created CPSC, the agency has promulgated regulations that set safety standards for products such as power lawn mowers and swimming pool slides. Under this same Act, CPSC has banned some products such as lead-based paints and lawn darts. Under the Federal Hazardous Substances Act, CPSC has issued regulations identifying toy parts that are small enough to harm young children. The use of such parts in toys designed for children under three years of age is banned. Under the Flammable Fabrics Act, CPSC has promulgated regulations setting flammability standards for all clothing textiles. Under this same Act, CPSC has provided additional, more specific regulations applicable to the flammability of children's sleepwear. Pursuant to those regulations, all children's sleepwear must carry care labels warning against the use of cleaning agents or treatments that could reduce the garment's flame resistance. Besides clothing, CPSC has also promulgated regulations setting flammability standards for carpets and rugs. Under the Poison Prevention Act, the CPSC has established regulations that require special packaging for certain products, such as child resistant caps found on many over-the-counter drugs. Such regulations also apply to other harmful substances including furniture polishes, turpentine, and paint solvents.

QUESTION: What criteria do these other agencies use in deciding on a standard for a marketing claim?

ANSWER: Please see answers directly above.

Deceptive Advertising

QUESTION: Does the FTC have any authority to regulate claims which are not deceptive but which may undermine national environmental policy goals?

ANSWER: As stated previously, the FTC Act does not authorize the Commission to promote environmental policy as such. Rather, the Commission's mandate, broadly stated, is to take action to prevent the marketing of products that misleads consumers or unduly restricts consumer choice. Absent such factors, merely because a company markets a product having adverse environmental effects would not be sufficient to state a claim under the FTC Act. All of the Commission's consumer protection investigations in the environmental area thus far have involved deceptive claims in advertising, labeling, or packaging of products.

QUESTION SUBMITTED BY SENATOR WARREN RUDMAN

Telemarketing Fraud

QUESTION: For the last year the Commission has intensified its efforts in the area of telemarketing fraud. One of the impediments to successful prosecution of fraudulent telemarketing operators are the venue provisions of the FTC Act, which limit legal suits for all participants in a fraud if they are not all in the same federal district. Are you seeking legislation to modify the FTC Act in order to overcome this legal obstacle?

ANSWER: During the last several Congresses, the Commission has supported legislative attempts to make it possible for the Commission's staff to bring all charges against all potential telemarketing fraud defendants in one federal district court when the ends of justice so require. While this issue has yet to be addressed by the newly constituted Commission, there is no reason to suspect a change of position on this issue.

QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN, JR.

Dairy Merger Reporting Program

QUESTION: Madame Chairman, for some time I have been inquiring about the status of the Commission's review of the special premerger notification rules that the FTC had proposed for the milk industry. It seems that a decision is always a couple of weeks away. Can you give me an update as to where we stand?

ANSWER: The Bureau of Competition is in the process of reviewing the Dairy Merger Report Program. The Bureau has advised me that it expects to forward a recommendation very shortly.

Telemarketing Activities

QUESTION: At the present time telemarketing scams are continuing to plague consumers. I believe that you are looking into this problem on several fronts, including whether the mail order rules could be broad enough to cover this problem. When might we see something relative to telemarketing?

ANSWER: The Commission's current rulemaking proceeding to amend its mail order merchandise trade regulation rule (the "TRR")[5] to include telephone-order merchandise does not address directly telemarketing scams. The purpose of the proceeding is to consider whether the TRR's timely shipment and notification requirements should apply to telephone orders.

On November 28, 1989, the Commission commenced its rulemaking to include telephone-order merchandise in the TRR.[6] The Commission noted that it was commencing the rulemaking in part because there was substantial public support for the proposed amendment from affected industry members, consumer groups, state and local officials, and others. The record is presently being summarized by the staff and the Presiding Officer. However, until the reports are published and the public has commented on them, the matter will not be referred to the Commission for final determination. The Commission anticipates reviewing the full record and making a final determination later this year.

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[5] 16 C.F.R. Part 435

[6] 54 FR 49060.

Although the proceeding does not address fraud per se, some public testimony in the rulemaking hearings suggested that one effect of adopting the proposed amendment would be to make operating such scams more difficult. For example, it was suggested that requiring telemarketers to substantiate their shipment representations would discourage illegitimate telemarketers. Other testimony suggested that, where non-shipment is a part of the scam, a federal enforcement presence would be welcome because scam operators frequently flee before the state can act.

Since 1983, the Commission has given high priority to attacking telemarketing fraud. During this period, the Commission has brought 59 cases against major telemarketing frauds whose aggregate sales at the time of suit exceeded $870 million dollars. The Commission has obtained injunctive relief against over 331 defendants, obtained judgments for over $148 million, and distributed or secured for future distribution over $71 million in redress funds to telemarketing fraud victims.

In addition, the Commission has prepared numerous consumer education publications dealing with the fraudulent telemarketing of art, coins, gemstones, precious metals, business supplies, and various other items and services. Hundreds of thousands of copies of these publications have been distributed not only to consumers, but also to state and local officials, members of the media, and others in a position to warn the public about telemarketing scams.

Finally, together with NAAG, the Commission has developed a computerized databank to facilitate cooperation among federal and state agencies in bringing cases against fraudulent telemarketers.

SUBCOMMITTEE RECESS

Senator RUDMAN. I may have a few for the record, but we are glad to see you here this morning.

Ms. STEIGER. Thank you.

Senator RUDMAN. We commend you for your good work.

Senator HOLLINGS. I really appreciate it. This concludes our hearing today. This subcommittee will recess until 10 a.m., Tuesday, March 5, when we will hear from the FCC and the Legal Services Corporation.

Senator RUDMAN. All right, good. Nice to see you.

Ms. STEIGER. Thank you, Senator. I appreciate your interest.

[Whereupon at 11:32 a.m., Thursday, February 28, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, March 5.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

TUESDAY, MARCH 5, 1991

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings and Rudman.

FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF ALFRED C. SIKES, CHAIRMAN

ACCOMPANIED BY ANDREW S. FISHEL, MANAGING DIRECTOR

OPENING REMARKS

Senator HOLLINGS. We apologize. Our Defense Appropriations Subcommittee is having its hearing and our distinguished colleague from New Hampshire and I are jumping around and acting like we are in charge of both of them.

This morning, the hearing will be with the Federal Communications Commission and the Legal Services Corporation.

We want to first hear from Chairman Alfred C. Sikes of the FCC. For the fiscal year 1992 the FCC is requesting $133.4 million in appropriations, an increase of $17.6 million over this year. Unlike some of the other regulatory agencies we have heard from during the past few weeks, the FCC is requesting an increase in fees that will offset the appropriations and outlays. The budget proposes to raise $65 million in fees.

Chairman Sikes, this has been a busy year, obviously, for the FCC. As the former head of the National Telecommunications and Information Administration, we recognize you as being uniquely well qualified. I think it is fair to say that many Senators appreciate your efforts to build back the Commission's capacity and integrity and get the FCC back in business. Let me yield to Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman. I don't have any statement. Welcome, Mr. Sikes. We know you have got many important issues before you, and I am sure we will talk about a few of those as well as the strictly money matters that you are here for this morning.

Mr. SIKES. Good.

PREPARED STATEMENT

Senator HOLLINGS. Go right ahead. We will include your statement in its entirety in the record. You can highlight it as you wish.

[The statement follows:]

STATEMENT OF ALFRED C. SIKES

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to briefly discuss the Federal Communications Commission's (FCC) appropriations request for fiscal year (FY) 1992.

With me today are the FCC's Managing Director, Andy Fishel, as well as our principal bureau and office chiefs. I believe we can address any questions the Subcommittee or its staff have.

Summary of Statement

This year, instead of our traditional budget submission, we have prepared a narrative report which reviews our request. It does a first-rate job describing our effort and placing our request in context. We have also prepared separate budget appendixes with back-up information.

This morning I would like to begin by making three basic points:

First, we are requesting $133.4 million -- about $17.6 million more than our FY 1991 appropriation. Approximately half of that 15 percent increase, however, reflects essentially nondiscretionary spending -- that is, increased employee compensation due to the recent and projected Federal pay raises, operating cost growth, and the like.

Second, the remainder -- or about $8 million -- has been quite consciously targeted toward critical program areas where the FCC's capabilities definitely need to be more robust. These areas include:

- Authorizing service -- essentially processing license applications and facilities changes;
- Adapting our rules -- particularly our common carrier, or telephone rules -- to today's competitive market realities, while also ensuring effective enforcement;
- Restoring integrity to our own, internal technology testing and research base; and,

- Modernizing our information management--that is, computer -- systems.

Third, we believe the improvements we are seeking for FY 1992 will:

- Definitely help us serve the American public better;

- Accelerate the formation of new commercial enterprises -- which, of course, has affirmative Federal revenue implications, because the quicker companies can get FCC licenses, the sooner they can expand their businesses, and begin hiring workers and paying taxes; and,

- Ensure that U.S. communications regulation keeps abreast of the changes occurring in this key, high-technology sector -- both at home and, especially, abroad.

Restoring Operational Integrity

Mr. Chairman, last year I appeared before the Subcommittee for the first time as the head of the FCC. In support of the FCC's FY 1991 request, I emphasized, again, three factors:

First, I stressed that the increases sought, in effect, actually did little more than correct for some of the resource shortages which the agency had experienced during the 1980s. During that decade, the FCC workforce shrank by some 21 percent. Personnel and resource reductions particularly affected our enforcement responsibilities, as well as our essential, capital resource base: our computers, our testing laboratory, and our other necessary technical equipment.

Too many of our Field Operations Bureau enforcement teams lacked the resources needed to police compliance with our essential safety of life and other regulations. Some of our Laurel Laboratory equipment was literally older than the technicians who operated it. Indeed, not until shortly after I arrived in 1989, did the FCC move from rotary dial to touch-tone phones.

Second, I stressed that the fiscal predicament confronting the FCC had serious public implications. The FCC deals on a broad basis, directly and daily with the American public. Literally hundreds of thousands of individuals all across the country are licensed directly by us. Tens of thousands of American businesses rely on our application processing -- our transactions operations -- to stay in business and do their job. How well we are able to do our job, in other words, has a direct and immediate public impact.

Third, I commented that the FCC's ability to perform also has major economic ramifications. The enterprises we regulate are increasingly integral to the total fabric of American commerce, as well as society. The FCC-regulated "Information Economy" accounts for a larger and larger share of the overall economy. It is a prime source of U.S. exports. And, the "electronic tools" which make up that Information Economy also constitute one of America's prime competitiveness assets -- tools that are essential in today's global markets.

FCC resource shortfalls, in other words, have serious negative consequences which can ripple throughout both the domestic and export economy.

Improvements in FCC Performance

The small increases we received for FY 1991 have started to make a significant difference. In broadcasting, we were able to shrink processing backlogs, and speed the advent of new services.

We have also been able to improve our enforcement activities. For example, a major effort to ensure safer radio tower lighting was undertaken in the wake of a tragic helicopter-tower accident. In both broadcasting and common carrier telephony, we were able to conduct field audits to facilitate industry compliance with our rules governing political broadcasts and customer choice of long-distance carriers from pay phones.

Last year, fines, forfeitures, and other payments to the Treasury in conjunction with consent agreements reached record levels. More importantly, indications are that industry compliance with important FCC safety-related rules, as well as telephone cost and pricing regulations, appears to have significantly improved.

We also were able to begin a multi-year effort to modernize our computer operations. We instituted a new filing and fee collection program which has both accelerated application processing times and expedited receipt of funds by the Treasury Department. Cooperation with our colleagues at the state level has been improved. Special initiatives were undertaken to assist minority telecommunications entrepreneurs, and to expand access to communications services by the disabled. FCC participation in international communications radio spectrum planning, standards development, pricing, and market access discussions was also strengthened.

The Pending Budget Request

The specifics regarding our FY 1992 request are detailed in this year's budget narrative, as I mentioned. I would like to amplify, however, on the critical importance of three of our programmatic requests.

Common Carrier

Let me begin with our common carrier-related requests, which account for much of the Administration's recommended increase. Here, we are proposing to add 38 additional employees -- to grapple with matters arising from an industry that will account for about $184 billion in revenues in calendar 1991 alone.

Additional personnel and resources will be focused particularly on processing tariff, mobile radio, and international matters. We will also be emphasizing our auditing and accounting responsibilities. And, very importantly, we will improve our response rate with respect to both formal and informal public complaints.

Past assumptions notwithstanding, "deregulation" in the common carrier field has actually increased pressures on the FCC's resources, for three principal reasons. First, it has meant an exponential increase in the number of common carrier and related enterprises. Second, deregulation has also stimulated a substantial sector growth. And, third, more firms and more growth has placed more responsibilities on the FCC to ensure full and fair competition.

Technology Resources

In technology, the FCC simply must strengthen its resources, and that is precisely what we are proposing. Communications is a technology-intensive field, and the choices the FCC is required to make must be better grounded on fuller understanding and greater expertise.

One area where we will be devoting special attention concerns high-definition television, where the FCC is literally now designing the regulatory and technical framework for tomorrow's broadcast and cable television.

Given the role broadcasting plays in our national life; the fact that it constitutes one of the principal sources of news, information, and entertainment for most Americans; and given the enormous financial stakes, the FCC simply cannot afford not to do the best possible job. Broadcasting is too important to get less than our very best.

Without the resources we are requesting, however, our existing capabilities will be sorely taxed. We will not, in short, be able to guarantee to the American people the best possible broadcast system.

In addition, we have begun the process of establishing a new radio frequency spectrum reserve, in order to facilitate the advent of new, high-technology communications services. A number of advanced services have been proposed, including digital audio radio, mobile services which rely on low earth orbit satellites, and a variety of sophisticated personal communications services. Here, again, the resources we are requesting are essential.

Computerization

And, a third area which I would like to emphasize involves our overall computerization effort.

Just as American industry and, indeed, most of the public sector has relied more and more on the power of computers to enhance productivity and provide improved services, the FCC has to be able to do the same.

Our systems today are just barely adequate to handle rudimentary tasks. As the volume of transactions swells, these systems are increasingly stressed. And, we lack the ability of several other agencies -- such as the Securities and Exchange Commission, or the Federal Maritime Commission -- to accommodate electronic filing, a step which would both reduce our burdens and, more importantly, better serve the public.

New Fees Program

And, finally, Mr. Chairman, I would like to briefly discuss the new FCC fees program which the Administration has recommended.

Currently, the FCC collects about $40 million yearly--funds which are remitted directly to the Treasury. Fees are imposed under a statutory schedule on FCC transactions.

Under the expanded program being proposed, the FCC will begin assessing fees to cover the cost of our policymaking, enforcement, public service, and international functions. Annual user fees will be placed on about three million of our licensees and other "users." We estimate new, additional fee receipts of $65 to $70 million in FY 1992.

Conclusion

That concludes my statement, Mr. Chairman. I and my colleagues here today would be pleased to address your questions.

BIOGRAPHY OF ALFRED C. SIKES

Nominated Federal Communications Commission (FCC) Chairman by President Bush, Alfred C. Sikes, a former U.S. Commerce Department Assistant Secretary, Missouri state government official, radio broadcaster, and lawyer, was confirmed by the Senate and sworn into office August 8, 1989. A Republican, his term extends through June 30, 1993.

As FCC Chairman, Sikes' accomplishments include: conducting a major cable television industry review which recommended increased reliance on competition, adoption of telephone rate regulation reforms, establishment of a new FCC Office of International Communications in recognition of the global character of today's communications markets, together with a series of changes aimed at expanding access to communications on the part of America's handicapped and disabled.

Recently, he directed commencement of an "attic-to-basement" review of broadcast rules, initiated a comprehensive review of digital audio broadcasting, and set spring 1993 as the date the FCC will adopt a high-definition television (HDTV) broadcast standard for the United States. He has particularly emphasized the need for Government to accommodate new, radio frequency-based innovations, and to facilitate accelerated development of the U.S. communications infrastructure.

From 1986 to 1989, Sikes served as Assistant U.S. Secretary of Commerce and Administrator of the National Telecommunications and Information Administration (NTIA) where he was responsible for publication of the NTIA TELECOM 2000 report, the first comprehensive U.S. national communications policy assessment in two decades. Then-Assistant Secretary Sikes also led U.S. communications market access and trade-related discussions involving West Germany, the United Kingdom, France, South Korea, the Philippines, and China.

Sikes headed his own broadcast management and media consulting firm, the Springfield, Missouri-based Sikes & Assoc., Inc., from 1976 to 1986, and operated radio outlets in Missouri and Colorado. After managing Missouri Governor (now U.S. Senator) Christopher Bond's successful 1972 gubernatorial campaign, Sikes served in Bond's Cabinet, heading the Departments of Consumer Affairs, Regulation, and Licensing (1974-76) and Community Affairs (1973-74). Previously he served as Assistant Missouri Attorney General and managed then-Attorney General (now also U.S. Senator) John C. Danforth's successful 1970 Senatorial race. He earlier practiced law with Allen, Woolsey & Fisher, a Springfield law firm.

A graduate of Westminster College and the University of Missouri Law School, Sikes, 51, was born in Cape Girardeau and raised in Sikeston, both in Missouri. He has two married daughters and a third attending the University of Wisconsin in Madison, and, with his wife, Marty, lives in Bethesda, Maryland.

FY 91/FY 92 Budget Comparisons
(Dollars in Millions)

	BA	Fees to Treasury	Fees to FCC	Total FCC Budget	Total Fees Collected
FY 91	115.8	41	0	115.8	41.0
FY 92	68.0	41	65.0	132.9	106.0
Difference	-47.8	--	+65.0	+17.1	+65.0

Note: FY 1992 Budget Authority is $133 million with offsetting collections of $65 million. However, the appropriation language provides that resources be made available from the U.S. Treasury to offset any differences between offsetting collections and total appropriations.

BA/Fee Utilization
(Dollars in Thousands)

	92Budget	92Fees	92 BA
Authorization of Service	$ 37,000	$41,000 to Treasury	$37,000 in BA
Policy & Rulemaking Enforcement Public Service International	$ 16,000 40,000 10,000 5,000 $ 71,000	$65,000 in Fees to FCC	$ 6,000 in BA
Legal Services Executive Direction Support	$ 5,000 20,000 $ 25,000	0	$25,000 in BA
Total	$133,000	$41,000 to Treasury $65,000 to FCC	$68,000 in BA

Feb. 27, 1991

Fees III - Fee Categories and Estimated Revenues

Bureau/Categary	Volume	Ann. Fee	Term	Total Fee	Revenue
Private Radio Bureau					
Exclusive					
LM (>470 MHZ-Base)	6,000	$60	5	$300	$1,800,000
Microwave	12,500	60	5	300	3,750,000
Shared					
Amateur	97,000	3	10	30	2,910,000
Marine (Ship)	165,000	10	5	50	8,250,000
GMRS	6,100	10	5	50	305,000
Public Safety	32,000	10	5	50	1,600,000
LM (>470 MHZ-Other)	45,000	10	5	50	2,250,000
LM (<470 MHZ)	45,000	10	5	50	2,250,000
Aircraft	44,000	10	5	50	2,200,000
Marine (Coast)	4,200	10	5	50	210,000
Aviation (Grnd)	5,850	10	5	50	292,500
*** Total PRB	462,650				$25,817,500
Mass Media Bureau					
AM (Day-II)	835	$150	1	$150	$125,250
AM (Day-III)	491	100	1	100	49,100
AM (Full-I)	77	500	1	500	38,500
AM (Full-II)	773	300	1	300	231,900
AM (Full-III)	1,742	200	1	200	348,400
AM (Full-IV)	1,017	100	1	100	101,700
FM (Non-Comm/Ed)	1,351	100	1	100	135,100

Bureau/Category	Volume	Ann. Fee	Term	Total Fee	Revenue
FM (Comm-I)	2,206	500	1	500	1,103,000
FM (Comm-II)	2,262	300	1	300	678,600
TV (Non-Comm/Ed)	350	100	1	100	35,000
TV (Comm-UHF)	554	1,000	1	1,000	554,000
TV (Comm-VHF)	554	3,000	1	3,000	1,662,000
LPTV/Trans/ Boosters	7,721	100	1	100	772,100
Auxiliaries	50,000	100	1	100	5,000,000
ITFS	859	100	1	100	85,900
Int'l Short Wave	25	100	1	100	2,500
CARS	2,165	150	1	150	324,750
CATV Comm. Units	29,964	300	1	300	8,989,200
*** Total MMB	102,946				$20,237,000

Bureau/Category	Volume	Ann. Fee	Term	Total Fee	Revenue
Common Carrier Bureau					
Dom. Fac./Mobile Svcs./Int'l	69,325	$125	1	$125	$8,665,625
Cellular	1,477	1,000	1	1,000	1,477,000
Space Stations	35	50,000	1	50,000	1,750,000
IXC (I)	1	2,000,000	1	2,000,000	2,000,000
IXC (II)	2	500,000	1	500,000	1,000,000
IXC (III)	17	1,000	1	1,000	17,000
IXC (IV)	280	100	1	100	28,000
LEC (I)	8	1,000,000	1	1,000,000	8,000,000
LEC (II)	15	150,000	1	150,000	2,250,000
LEC (III)	37	1,000	1	1,000	37,000
LEC (IV)	1,300	100	1	100	130,000
*** Total CCB	72,497				$25,354,625
*** Grand Total ***	638,093				$71,409,125

FISCAL YEAR 1992 BUDGET REQUEST

Mr. SIKES. Just building, Mr. Chairman, on your observation of our request, approximately one-half of that 15-percent increase reflects nondiscretionary spending. For example, increased employee compensation.

The remainder, or about $8 million, has been targeted for critical program areas, including authorizing communications services, adapting our rules to today's competitive market realities, restoring our technology/testing and research base, and modernizing our computer systems.

NEW FEES PROGRAM

Mr. Chairman, I would also like to note that under the new FCC expanded fees program which the administration has proposed, the FCC will begin assessing fees to cover the cost of our policymaking, enforcement, public service, and international functions.

We estimate new additional fees which we seek will provide from $65 to $70 million in fiscal year 1992. The small increases we received last year have started to make a significant difference. In broadcasting, we were able to shrink the processing backlogs and speed the advent of new services. We have also been able to improve our enforcement activities. Last year, fines, forfeitures, and other payment to the Treasury, in conjunction with consent agreements, reached record levels.

FISCAL YEAR 1992 REQUESTED RESOURCES

The specifics regarding our request for the upcoming budget request are detailed in the budget narrative. I would like to amplify, however, on three of our programmatic requests. Let me begin with our common carrier-related request, which accounts for much of the recommended increase. Here, we are proposing to add 38 additional employees to grapple with matters arising from an industry that will account for approximately $884 billion in revenues in calendar year 1991 alone.

In technology, the FCC simply must strengthen its resources if we are to keep up with all the changes that are occurring. One area where we will be devoting special attention to concerns high definition television. In addition, we have begun work which I hope will result in establishing a new radio frequency spectrum reserve in order to facilitate the advent of new, high-technology communications services.

And in the case of our overall computerization effort, let me emphasize that our systems today are just barely adequate to handle rudimentary tasks. We need additional resources if we are to offer the public faster, better and more responsive service.

IMPACT OF REDUCED RESOURCES

Mr. Chairman, last year I appeared before the subcommittee for the first time as the head of the FCC. In support of the request, I emphasized that the fiscal predictment confronting the FCC had serious public implications. The FCC deals on a broad basis directly and daily with the American public. Literally hundreds of thousands of individuals all across the country are licensed directly by us. Tens of thousands of American businesses rely on our application processing and our transaction operations, which help them stay in business.

How well we are able to do our job, in other words, has a direct and immediate public impact. The FCC's ability to perform also has other economic ramifications. The enterprises we regulate are increasingly integral to the total fabric of American commerce as well as the rest of society. The FCC regulated-information economy accounts for a larger and larger share of the overall economy and is a prime source of U.S. exports, and the electronic tools that make up that information economy also constitutes one of America's prime competitiveness assets, tools that are essential in today's global markets.

FCC shortfalls, in other words, have serious negative consequences which can ripple throughout both the domestic and export economy.

In conclusion, we simply say that we believe that our fiscal year 1992 request represents a sound and prudent proposal, one which will pay important dividends to the American people and to our economy, and it will also provide the resources which are needed to ensure that the United States maintains its leadership in a key, high-technology sector.

I would, of course, ask for approval of the request. Thank you.

NEW FEES PROGRAM

Senator HOLLINGS. I will just submit my questions on the HDTV and competition and everything else; we will submit those for the record.

But elaborate for the committee, Mr. Chairman, with relation to the fees. How much and how do you raise them? Is it $65 million you intend to raise from those fees?

Mr. SIKES. The essential structure is $65 to $70 million. The reason that there is a spread is: First, we are going to have to pay the National Finance Center for the operational costs of the fee collections which includes billing and processing.

Second, we assume that there will be a default rate. In other words, there will be services, maritime radio, for example, where we are going to issue a bill and the bill is not going to be paid.

As we went through the fee structure, we basically looked at three factors: One is the cost to handle the various areas; second, we looked at commercial versus noncommercial; and third, we looked at whether a particular fee level, even though it may be cost based, would impair the ability of the license user to perform the service. By applying those three principles we came up with the fee proposals that are before this committee.

Senator HOLLINGS. Give us some examples so we will have a better grasp of it. It goes from what to what? I want to find out, because I am going to be hearing complaints, and I want to get a pretty good record on this.

Mr. SIKES. Well, the largest is a fee of $2 million, as I recall, annually for what is known as the class I interexchange carrier which is AT&T. The smallest fee is a $3 fee for the amateur radio licensee. In the middle, turning for example, to broadcast areas, you have a low of $100 for one AM radio daytime category and up to $3,000 for a television VHF license. That is, again, an annual fee.

We have others in the high dollar area.

Senator HOLLINGS. What is the license fee for a television UHF license?

Mr. SIKES. Three thousand dollars.

Senator HOLLINGS. Three thousand dollars?

Mr. SIKES. In some of the high-volume categories, for example, the Private Radio Bureau issues 165,000 marine licenses annually, and that would include their fee of $10. Typically, the higher the volume the lower the fee because you have got the volume to spread your costs over.

Senator HOLLINGS. And public radio and public television?

Mr. SIKES. Noncommercial television, $100; noncommercial FM, $100; and I don't see a noncommercial AM because there aren't too many of them.

Senator HOLLINGS. Overall, what does that bring it to? You made the statement last year that you would like to have the agency operate on a self-sustaining basis. How far would that put you on to a self-sustaining basis, the $65 to $70 million additional dollars?

Mr. SIKES. We would be under by about $28 million, as I recall.

Senator HOLLINGS. Is that if the Commission moves forward; is that a condition?

Mr. SIKES. The $133 million, is that not the essential——

Senator HOLLINGS. What is it?

Mr. SIKES. The $106 million approximately would be raised through fees, and $133 plus million is our request.

Senator HOLLINGS. You are going to be coming back next year to go up to the $133 million or increase fees there?

Mr. SIKES. I don't know, because I am not sure what OMB anticipates as its pattern. [Laughter.]

Senator RUDMAN. That was really a rhetorical question. [Laughter.]

Senator HOLLINGS. Do we have any fees on Darman over there? Has anybody thought about that?

Thank you. Senator Rudman?

SYNDICATION AND FINANCIAL INTEREST RULES

Senator RUDMAN. Thank you, Mr. Chairman. Just let me boil down a few fairly complex issues to a few very direct questions.

The Council of Economic Advisers has said in their report in two or three lines out of a huge report that the Financial Interest and Syndication Rules will be repealed. My question is about the process, really; how much attention do you pay to what the White House says, and do you believe that ex parte communications from the White House are as improper as you seem to believe and correctly so? They are from the Congress.

Mr. SIKES. I don't count the President's economic messages as ex parte——

Senator RUDMAN. Neither do I. It was two questions.

Mr. SIKES. I think that ex parte communications are and must be treated under our ex parte rules, whether they are from the White House or Congress or the private sector.

With respect to the weight to be given, I will pay some attention to it, but we have got a very exhaustive record. This proceeding has been open for 14 or 15 months, and so it will certainly be given some weight.

Senator RUDMAN. Did anybody representing the Council appear during the hearings to give testimony under oath as to that issue?

Mr. SIKES. No.

Senator RUDMAN. Wouldn't that have something to do with the weight or lack thereof that you might pay to it since it is a matter that was contested between parties?

Mr. SIKES. Well, I think again that you have got a lot of factors in your mind and you are going to add and subtract based on those factors. I really haven't thought of your point, which is that they didn't appear.

Senator RUDMAN. Do you think that is an important point?

Mr. SIKES. Not necessarily.

Senator RUDMAN. You don't. Well, this is an independent agency, and I suppose when people have contested matters before it, they ought to expect independent judgment, so I guess it is my just general point that anyone, including the Council of Economic Advisers, has a perfect right to testify, and any Member of Congress has a right to testify on the record, and doesn't that kind of militate against giving it substantial weight since it is not part of the record, they were not heard, and they are to be examined on their position, their rationale, and their economic data base?

Mr. SIKES. There were dozens and dozens of filers in our open proceeding, including the Department of Justice, the Federal Trade Commission, and the Department of Commerce. They engaged in comments and reply comments and then they engaged in comments and reply comments in our further notice, so the executive branch did participate quite significantly in the give and take in our process.

Senator RUDMAN. I obviously asked the question. It is a highly contested issue. It is one that you have recently received letters, I understand, from people in the House who asked you to make the decision based on the merits, irrespective of what they might say. My question was directed to whether or not you think that their report, that portion thereof that directs itself to this issue is, in fact, an addressing of the merits some way, and I guess your answer would be it is, although the weight that you ascribe to it, you can't assess; is that accurate?

Mr. SIKES. That is correct.

Senator RUDMAN. Do you think the Commission is totally open-minded on the issue as it approaches its decision?

Mr. SIKES. Yes; I would say that minds are beginning to be made up, because we have got the report and order scheduled on the March 14 agenda.

Senator RUDMAN. It wouldn't surprise you that irrespective of what the Commission did that there might be a congressional attempt to change whatever the outcome was?

Mr. SIKES. I am serene with the confidence that it will happen. [Laughter.]

Senator **RUDMAN**. I assume that you have no doubt that the Congress has the authority to do that if, in fact, it could pass legislation signed by the President.

Mr. **SIKES**. I have absolutely no doubt.

Senator **RUDMAN**. Let us hope that doesn't happen. I hope you can work out a solution that pleases everyone.

Mr. **SIKES**. Thank you.

TELEMARKETING

Senator **RUDMAN**. Let me ask you just briefly about the telemarketing telephone calls. In my State there is a law that requires disconnect after 30 seconds, but of course, that only takes care of intrastate calls. I had a very interesting experience that I mentioned to somebody here the other day to somebody from the FTC where someone received a telemarketing call, recognized what it was and hung it up and had to make a phone call about 3 minutes later and picked up the phone, and the phone was still connected and continued, and it was still connected. I wonder what would have happened if there had been a fire at that point, and it was the only telephone, which it was from where I was calling from, and it went 3 to 5 minutes, this call.

What are you doing about that kind of thing?

Mr. **SIKES**. We are going to be opening a rulemaking on the same agenda that we have been talking about for the Financial Interest and Syndication Rules that will deal with a number of questions, this one included.

Senator **RUDMAN**. Are 900 numbers part of that? That is my next question.

Mr. **SIKES**. Yes; that is right. 900 numbers is a part of that. Also, we acted recently in the matter of Pepsi's Super Bowl promotion which we thought might do harm to the telephone network.

Senator **RUDMAN**. Yes.

Mr. **SIKES**. It is my view that the FCC has as one of its core responsibilities protection of the integrity of the network, the ability of people to pick up the phone and get a dial tone instantly, and so we are going to work toward that.

I keep being assured by the equipment makers and by the network providers that it is only in a very few older exchanges and only some of the older autodialers, as they are called, where this kind of problem exists. Therefore, it is attenuating, and it is about to go away. All of that equipment is being turned over. We are going to see whether we need to do something in the meantime. I am inclined to say that the equipment that is used by autodialers has to have a disconnect function so when the click occurs, that is, when you hang up, then that particular piece of equipment disengages so that it does not do harm to the network.

Senator **RUDMAN**. On the 900 numbers. Go ahead.

Mr. **SIKES**. Well, we are going to be looking at, again, a range of things moving toward, a report and order this summer. That is, we will begin with the Notice of Proposed Rulemaking on March 14. At the very least we are going to be looking at requiring preambles which when someone calls they are told the nature of the service and how much it is going to cost them and then they will be given time to hang up so that they won't have any costs from that call.

We are also going to be looking at the potential of a resident to block from receiving 900 services in the event they are concerned about children or other issues. Those are going to be some of the core questions.

Senator RUDMAN. I think that is an issue that we really have to look at very closely. I don't know, maybe I just don't understand some of the marketing techniques well enough. To me, there is something essentially wrong with a telephone, which is essentially a communications device or a voice over data being available in a location on which a service is procured from a third party and automatically billed on your phone bill without any kind of control as to who can use that instrument, that telephone.

I just have a problem with that, and maybe I am alone in that, but I surely hope that you look at that very closely, because we have received a lot of complaints about that, and there has been a lot of news stories and horror stories about that. By the way, some of the services themselves, I think, have some very serious problems with the kind of information that they are providing.

Mr. SIKES. I certainly agree.

Senator RUDMAN. That is a whole other issue.

Mr. SIKES. We have been working with the FTC on that dimension of the problem.

HIGH DEFINITION TELEVISION

Senator RUDMAN. That is why I asked the question. Finally, I will just ask you a quick question on HDTV. I assume from your statement, the statement of the Commission, regarding competitiveness in the international communications market, that is in your justification that when you adopt an FCC standard on HDTV that it will hopefully be one that will be owned by an American industry rather than Japanese, German, or elsewhere in terms of competitiveness; is that a factor?

Mr. SIKES. Yes; it is a factor, but I need to explain how it is a factor. What happened was some years ago we essentially were presented with what many in the industry call a fait accompli, that is, the Japanese had worked for years on the satellite-based high definition system. They came over and attempted to get us to embrace it.

The National Telecommunications and Information Administration was not interested in embracing that technology for a variety of reasons, one being that it was satellite based and most of our assets are in land-based distribution systems.

It doesn't mean that the satellite shouldn't be able to do high definition television, it is just that we have got to pay some attention to this next generation of television in land-based systems, in broadcast and cable.

So to distill what could be a long story, then I urged and, upon becoming Chairman of the Commission, we continued to follow up on creating a competitive process and providing those who sought to compete with time to do research and development work for this next generation of television with land-based systems.

The encouraging thing is that in the last year U.S. companies have been the first to come in with systems for land-based technologies, and they are all digital systems. The industrial policy systems that have been produced in Japan and in Europe are analog systems, and so what it seems to me is happening is that the United States companies are using their strength in microprocessing and in a range of computer-based technologies to leapfrog into yet a more advanced generation of televisions. I think when we select a standard in 1993, U.S. companies are going to be in a very strong position.

Senator RUDMAN. It would be, I think, almost unthinkable that one of those foreign countries, irrespective of the situation, would award the technology to a technology based in the United States. To me, that would be almost unthinkable. I would think that it is encouraging that we are in a competitive position, but I would hope that if there were time needed, that we did not make, I think, a fatal mistake in terms of not ever awarding this to a foreign source, because HDTV, of course, as you well know, but I think the public does not understand, has a lot more to do with a lot of things other than television. It happens to be the basis of the semiconductor industry for the next two decades.

My chairman here, we talk about a lot of trade issues in this committee, but as far as I am concerned, I am glad and I know and I am aware of what the American companies are doing, but I would hope that the FCC, which is an arm of the U.S. Government, would never award a system based on some foreign technology. I could not even think of that being—that is unthinkable to this Senator, and I dare say, if it happened, you talk about congressional response, you would get a congressional response.

Thank you, Mr. Chairman.

TELEMARKETING

Senator HOLLINGS. Mr. Chairman, since telemarketing was mentioned, please give us your suggestions, if you can, relative to telemarketing. These computerized calls, I can't even go along with that. I don't see how I can avoid a person calling me and saying, "Vote for Rudman." But if I have a machine that automatically calls and says "Vote for Rudman or Hollings," that, to me is wrong. We ought to have laws against that and, therefore, the disconnect to make darned sure it does not get connected up in the first place.

Mr. Sikes? I see a look of amazement on your face there. [Laughter.]

You think those computerized calls are a good thing or they can be controlled?

Mr. SIKES. They are, of course, calls placed by computers as opposed to people. We have computers do a lot of things that people have customarily done. I think the content, to the extent that it is deceptive or fraudulent, should be acted on aggressively by the Federal Trade Commission. To the extent that it causes harm to the network, I think we should act aggressively on it. To the extent that it is seducing people unknowingly into spending money, I think we should act on it.

I would not favor a complete prohibition, no.

Senator HOLLINGS. Why not?

Mr. SIKES. I think, again, it is a form of communication. I think sometimes it is used constructively.

BEST AVAILABLE COPY

Senator HOLLINGS. You are not talking to anybody. You are getting a message, making me answer the phone and everything else for your business, whether I am interested or not.

Mr. SIKES. If it is solely a nuisance, then it will go away, because people will not respond.

Senator RUDMAN. That is a classic free market answer. [Laughter.]

Senator HOLLINGS. Yes; I can see right now. Well, we will see about that. I think it can be controlled and should be controlled, these computerized calls. I am constantly telling people, don't put in their telephone service in order to receive computerized calls.

Senator RUDMAN. I would just add on, Mr. Chairman, with all due respect to Mr. Sikes, the American people have a right to some privacy and peace and quiet in their homes. I have an unlisted telephone number in this city for obvious reasons. Whenever that phone begins to ring, which is getting to be more and more lately, it is telemarketing, and I object.

I think that you have an obligation to protect the right of the sanctity, if I can use that word, of the quiet of one's home against the jangling of telephones. You can't pull the phone out because you may get an important call. I agree with the chairman, and frankly, I am waiting to see what you do down there.

I think a lot of people in this Congress are about to have an end to computer dialing of telephones. I think if you took a poll in the Congress right now, you would find very little support except for those who have some industries in their State manufacturing equipment.

I don't think that we should have to endure, the American people, telephones jangling in the all hours of the evening by computers from people who want to sell us their products. Granted, if they want to pick up the telephone and call us, they can do that. That requires some effort and some cost, and that is why they have gone to computers.

So I agree with the chairman. If you carry no other message out of here from two members of this committee, and I think it is held by a lot of people, we are getting sick and tired of it, because our constituents are getting sick and tired of it, because they want some peace and quiet in their homes; they don't want to go and pick up the telephone.

A lot of people have one telephone in a large house and they have to go and pick up the telephone, and it gets to be a nuisance. Free markets are fine, but privacy is important, too.

Mr. SIKES. I understand, and I would just say two things in reaction, neither in an effort to dispute what you have said. First of all, the FCC can't do that, only the Congress can prohibit that.

Second, what we are working toward now is to facilitate a national caller ID system where you can identify the person calling and choose not to answer the phone, which isn't a perfect answer, but I think it will be helpful.

Senator HOLLINGS. You go right to the politics of it. You just put on the machine at 11 o'clock at night and say your opponent is calling, and hope you both run. That is one way to get rid of an opponent. [Laughter.]

Senator RUDMAN. Do you want to write up some legislation?

Senator HOLLINGS. Yes; put some legislation on telemarketing. I think it is bad, to tell you the truth. The telephone is there for your communications and to receive regular calls, not marketing. That is the point. As the Senator points out, it is there for privacy and private communications and not to receive marketing calls.

We appreciate your appearance here today, sir.

Mr. SIKES. Thank you.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. Thank you. We will have some additional questions which will be submitted to you for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the Commission for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Fees -- Financing the FCC

Chairman Sikes, you are proposing to raise $65 million in fees to finance the Commission's enforcement, policy-making, public service and international functions. As I understand it, the Administration has proposed enactment of these fees through appropriation language -- not authorization language. In fact, the Administration just submitted a budget amendment because it did not feel the bill language in the President's FY 1992 Budget was sufficient.

Question: No doubt, Senator Rudman and I will hear from every group that you intend to assess. Therefore, could you please elaborate in more detail on these fees? Who gets charged, how much, and why should they be willing to pay a greater share of the FCC budget?

Answer: The new fees would be collected annually from persons licensed or otherwise regulated by the Commission (e.g., cable television systems). We believe the direct beneficiaries or users of Commission services should pay for these services to the extent possible. By providing a reliable revenue base for funding Commission operations, the user fees also will benefit licensees and other beneficiaries in that they would help to alleviate future disruptions to Commission programs caused by inadequate or uncertain funding resulting from total dependence upon appropriated funds. The attachment shows proposed individual annual user fee amounts by category.

PROPOSED FCC USER FEES

Feb. 27, 1991

PRIVATE RADIO BUREAU

Fee Rationale: Due to the volume of licensees in the Private Radio Services, a large percentage of Commission enforcement and public service activities go to support these licensees. The fees have been established so that each licensee pays an equitable amount for the benefits received from the Commission. Those licensees who receive a higher quality communications channel, due to exclusive or lightly shared assignments, pay a higher fee than those who share marginal quality channels. In addition, the services having the exclusive or lightly shared assignments also generate the most difficult and resource consuming rule makings. Because of the relatively small annual fee amounts in the Private Radio Services, applicants for new and renewal licenses will be billed for their full license terms at the time of grant and will be asked to pay a fee covering a five or ten year term (with only a percentage of licensees paying a fee in any one year).

Fee Category: Land Mobile-Above 470 Mhz (Base) Fee Amount: $60/Yr.

Category Description: This is an exclusive private radio service providing high quality voice or digital communications intended to provide message transmission between vehicles or to fixed stations to further the business or public safety activities of the licensees. Services may be offered on a private carrier basis in the Specialized Mobil Radio Services (SMRS).

No. Payees: 6,000 Examples: Fleet Call, Exxon, McDonalds

Fee Computation: Total fee of $300 billed to licensee covering five year license term.

Fee Category: Microwave Fee Amount: $60/Yr.

Category Description: Private microwave systems serve as lower cost and more flexible alternatives to common carrier services between fixed points. Microwave frequencies are often used to relay data and control equipment by companies such as railroads, pipelines and utilities.

No. Payees: 12,500 Examples: CSX Railways, Exxon, Baltimore Gas & Electric

Fee computation: Total fee of $300 billed to licensee covering five year license term.

Fee Category: Amateur **Fee Amount: $3/Yr.**

Category Description: Often called "ham radio", this service is intended for persons interested in radio technique solely with a personal aim and without pecuniary interest. Amateur operators use their stations for self-training, intercommunications, promoting international good-will, and for experimentation. No business communications are permitted. Amateur licensees are required to pass various examinations to obtain operating privileges.

No. Payees: 97,000 Examples: Individuals

Fee Computation: Total fee of $30 billed to licensee covering 10 year license term.

Fee Category: Marine (Ship) **Fee Amount: $10/Yr.**

Category Description: Shipboard stations provide communications links between water craft and to shore-based stations. In the case of large passenger or cargo vessels, radio installations are required by domestic and international law. Smaller vessels, such as recreational boats, may have radio equipment voluntarily installed by the owners and operators.

No. Payees: 165,000 Examples: Individuals, small sightseeing/boat tour companies, fishing boats, oil companies.

Fee computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: General Mobile Radio Service (GMRS) **Fee Amount: $10/Yr.**

Category Description: The GMRS is a land mobile radio service providing communications between vehicles or to fixed stations, available primarily to individuals for short-range, two-way communications to facilitate the personal or business activities of licensees and their immediate family members or associates. No operator examinations are required.

No. Payees: 6,100 Examples: Individuals

Fee Computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: Public Safety **Fee Amount: $10/Yr.**

Category Description: Land mobile authorizations for public safety intended to provide transmission of messages between vehicles or to fixed stations to further activities of governmental entities or public safety organizations.

No. Payees: 32,000 Examples: Police and fire departments, ambulance services, beach patrols.

Fee computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: Land Mobile (Other than Base above 470 Mhz) Fee Amount: $10/Yr.

Category Description: Non-exclusive land mobile authorizations, providing marginal quality of service, intended to provide transmission of messages between vehicles or to fixed stations to further the business activities of the licensees.

No. Payees: 90,000 Examples: Exxon, McDonalds, taxicab companies and other small businesses.

Fee computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: Aircraft Fee Amount: $10/Yr.

Category Description: Authorizations in this service provide for communications between aircraft or to ground stations for the safe and efficient operation of airplanes or other aircraft. This radio service includes frequencies used to communicate with air traffic control facilities.

No. Payees: 44,000 Examples: Individuals, small businesses (including any business that uses a plane for transportation purposes), flight schools, all commercial airlines.

Fee Computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: Marine (Coast) Fee Amount: $10/Yr.

Category Description: Coast stations in the maritime services are land-based stations that provide communications services to ships and other water craft throughout the coastal and inland waterways of the country. Depending on the type of station, communications range from those from ships on the high seas to recreational boats on domestic lakes and rivers.

No. Payees: 4,200 Examples: Watercom, Mobile Marine Radio, small marina operators

Fee computation: Total fee of $50 billed to licensee covering five year license term.

Fee Category: Aviation (Ground) Fee Amount: $10/Yr.

Category Description: Aviation ground stations provide ground-based communications to aircraft. Communications may include operational weather or safety-related information or data or, for non-federal facilities, navigational or air traffic control information.

No. Payees: 5,850 Examples: Flight schools, all airlines, AIRINC

Fee computation: Total fee of $50 billed to licensee covering five year license term.

MASS MEDIA BUREAU

Fee Rationale: Mass Media Bureau fees reflect the apportionment to users of costs for FCC services allocated to the Mass Media Bureau in carrying out its enforcement, policy and rulemaking, international and public service functions. The fees generally apply to current licensees and such other users as cable television systems. While each fee is a rough approximation of the apportionment of the Mass Media activity costs, a minimum fee amount of $100 has been established.

Fee Category: AM Radio (Day-II) **Fee Amount: $150/Yr.**

Category Description: Any Class II AM radio station operating on a daytime or limited-time basis, with power not less than 0.25kw nor more than 50kw.

No. Payees: 835 Example: WABS (Arlington, Va.)

Fee computation: Total fee billed annually to licensee.

Fee Category: AM Radio (Day-III) **Fee Amount: $100/Yr.**

Category Description: Any Class III AM radio station operating on a daytime or limited-time basis, with power not less than 0.25kw nor more than 5kw.

No. Payees: 491 Example: WCTN (Potomac-Cabin John, Md.)

Fee computation: Total fee billed annually to licensee.

Fee Category: AM Radio (Full-I) **Fee Amount: $500/Yr.**

Category Description: Any Class I AM radio station operating on an unlimited time basis on a clear channel, as defined in Sections 73.21 and 73.25 of the Commission's rules. This service is designed to provide primary and secondary service over an extended service area and at relatively long distances. The station's daytime service area is free from objectionable interference from other stations on the same and adjacent channels, while its nighttime service area is only free from objectionable interference from stations on the same channel.

No. Payees: 77 Example: WABC (New York City)

Fee computation: Total fee billed annually to licensee.

Fee Category: AM Radio (Full-II) **Fee Amount: $300/Yr.**

Category Description: Any Class II AM radio station operating on an unlimited time basis on a clear channel, as defined in Sections 73.21 and 73.25 of the Commission's rules. This service is designed to render service over a service area that is limited by, and subject to, such interference as may be received from Class I AM radio stations.

No. Payees: 773 Example: WPGC (Morningside, Md.)

Fee computation: Total fee billed annually to licensee.

Fee Category: AM Radio (Full-III) **Fee Amount: $200/Yr.**

Category Description: Any Class III AM radio station operating on an unlimited time basis on a regional channel, as defined in Sections 73.21 and 73.26 of the Commission's rules, with a power of not more than 5kw, which is designed to render service primarily to a principal center of population and in the rural area contiguous thereto.

No. Payees: 1,742 Example: WGMS (Bethesda, Md.)

Fee computation: Total fee billed annually to licensee.

Fee Category: AM Radio (Full-IV) **Fee Amount: $100/Yr.**

Category Description: Any Class IV AM radio station operating on a local channel, as defined in Section 73.21 of the Commission's rules, with no greater than 1kw power daytime or nighttime, which is designed to render service primarily to a community and the suburban and rural areas contiguous thereto.

No. Payees: 1,017 Example: WFVA (Fredericksburg, Va.)

Fee computation: Total fee billed annually to licensee.

Fee Category: FM Radio (Non-commercial/Educational) Fee Amount: $100/Yr.

Category Description: Any FM radio station which is licensed to a nonprofit educational organization using the station on a noncommercial basis for the advancement of an educational program.

No. Payees: 1,351 Example: WFUV (New York City)

Fee Computation: Total fee billed annually to licensee.

Fee Category: FM Radio (Commercial I) Fee Amount: $ 500/Yr.

Category Description: Any FM radio station, other than those stations licensed as noncommercial, educational stations, which meet the location, power and antenna height requirements for stations designated as Classes C, C1, C2, or B that are set forth in Sections 73.205, 73.210 and 73.211 of the Commission's rules.

No. Payees: 2,206 Example: WCBS (New York City)

Fee computation: Total fee billed annually to licensee.

Fee Category: FM Radio (Commercial II) Fee Amount: $300/Yr.

Category Description: Any FM radio station, other than those stations licensed as noncommercial, educational stations, which meet the location, power and antenna height requirements for stations designated as Classes A, B1,C3, or D that are set forth in Sections 73.205, 73.210 and 73.211 of the Commission's rules.

No. Payees: 2,262 Example: WEZG (North Syracuse, NY)

Fee computation: Total fee billed annually to licensee.

Fee Category: TV (Noncommercial/Educational) Fee Amount: $100/Yr.

Category Description: Any UHF or VHF TV station, which operates on a channel assigned for use only in the noncommercial, educational TV broadcast service, as set forth in Section 73.606 of the Commission's rules, and which is licensed to a nonprofit, educational organization using the station on a noncommercial basis, primarily to service the educational needs of the community and for the advancement of educational programs.

No. Payees: 350 Example: WETA (Washington, DC)

Fee computation: Total fee billed annually to licensee.

Fee Category: TV (Commercial-UHF) Fee Amount: $1,000/Yr.

Category Description: Any UHF TV station other than those licensed by the FCC as noncommercial, educational TV stations.

No. Payees: 554 Example: WFTY (Washington, DC)

Fee computation: Total fee billed annually to licensee.

Fee Category: TV (Commercial-VHF) **Fee Amount: $3,000/Yr.**

Category Description: Any VHF TV station other than those licensed by the FCC as noncommercial, educational TV stations.

No. Payees: 554 Example: WRC (Washington, DC)

Fee computation: Total fee billed annually to licensee.

Fee Category: Low Power Television (LPTV)/ Translators/Boosters **Fee Amount: $100/Yr.**

Category Description: LPTV: Any UHF or VHF TV station which operates with a transmitter power output limited to a maximum of 0.01kw for an UHF facility and, generally, 1kw for a VHF facility, and which retransmits the programs and signals of a TV broadcast station, originates programming, and/or operates as a subscription service. Translators: Any FM or TV station which, respectively, retransmits the programs and signals of an FM or TV broadcast station, without significantly altering any characteristic of the original signal other than its frequency and amplitude, for the purpose of providing FM or TV reception to the general public. Boosters: Any FM or TV stations which, respectively, is operated by the licensee of a FM or full service TV broadcast station for the purpose of retransmitting the programs and signals of the licensee's station by amplifying and reradiating such signals, without significantly altering any characteristic of the original signal other than its amplitude.

No. Payees: 7,721 Example: K33AB (Sibley, Iowa)

Fee computation: total fee billed annually to licensee.

Fee Category: Auxiliaries **Fee Amount: $100/Yr.**

Category Description: Broadcast stations using radio frequencies operated in conjunction with AM, FM or TV stations, such as remote pickup stations, TV auxiliary broadcast stations, aural broadcast studio transmitter links and intercity relay stations, and low power auxiliary stations that are defined in Part 74 of the Commission's rules.

No. Payees: 50,000 Example: WHY-842 (Great Falls, Montana)

Fee computation: Total fee billed annually to licensee.

Fee Category: Instructional Tele. Fixed Stations (ITFS) **Fee Amount:$100/Yr.**

Category Description: Any Instructional Television Fixed Station (ITFS) which is operated generally by an educational organization and used primarily for the transmission of visual and aural instructional, cultural or other types of education material to one or more fixed receiving locations.

No. Payees: 859 Example: KRS-81 (Yonkers, NY)

Fee computation: Total fee billed annually to licensee.

Fee Category: International Short Wave **Fee Amount: $100/Yr.**

Category Description: Any international broadcast station licensed by the FCC to operate on a frequency in the 5,950 khz to 26,100 khz range, which station's transmissions are intended to be received directly by the general public in foreign countries.

No. Payees: 25 Example: KNLS (Anchor Point, Alaska)

Fee computation: Total fee billed annually to licensee.

Fee Category: Cable Antenna Relay Service (CARS) **Fee Amount: $150/Yr.**
Category Description: Any cable television relay service station which is used for the transmission of television and related audio signals, signals of AM and FM broadcast stations and cablecasting from the point of reception to a terminal point from where the signals are distributed to the public by a cable television system.

No. Payees: 2,165 Example: WRE-36 (Wyndmoor, PA)

Fee computation: Total fee billed annually to licensee.

Fee Category: Cable Television Community Units **Fee Amount: $300/Yr.**

Category Description: A separate and distinct area or areas, including communities, unincorporated communities within unincorporated areas, and single, discrete unincorporated areas, within which a community or municipal franchising entity has authorized a cable television system to operate.

No. Payees: 29,964 Example: OH1969 (Proctorville, Ohio)

Fee computation: Total fee billed annually to licensee.

COMMON CARRIER BUREAU

Fee Rationale: The Commission commits substantial resources toward regulating common carriers pursuant to the requirements of Titles II and III of the Communications Act that are not directly related to applications processing, tariff filings, comparative hearings or formal complaints. These activities include policy and rulemaking, international conference participation, international negotiations concerning frequency and satellite coordination activities, spectrum management and allocation, public education/ assistance and enforcement. The costs of these additional services was allocated to the various common carrier regulatees in accordance with the relative amount of resources required to perform the related workload. Inter-exchange carrier fees are based upon presubscribed customer lines while local exchange carrier fees are based upon the number of access lines.

Fee Category: Domestic Facilities/Mobile Services/International Facilities **Fee Amount: $125/Yr.**

Category Description: Includes common carriers who are issued a license under Part 21 of the Commission's rules. This includes licensees in the Point to Point Microwave, Local Television Radio Service and Digital Electronic Message Service. It also includes common carriers who are issued a license to provide land-based or air-to-ground mobile telephone or paging services to the public using one or more radio frequencies under Part 22 of the Commission's rules. This category also includes common carriers licensed to use radio frequencies to provide telephone services at fixed locations, such as Basic Exchange Telecommunications Radio Services, Rural Radio and Offshore Radio. It also includes carriers who are licensed under Part 25 of the rules, except in the case of licnesed space stations. Licensees under Part 25 include Fixed Satellite Transmit/Receive Earth Stations, Fixed Satellite Small Transmit/Receive Earth Stations, Fixed Satellite Receive Only Earth Stations, Fixed Satellite Very Small Aperture Terminal (VSAT) Systems, Mobile Satellite Earth Stations and Radio Determination Satellite Earth Stations. This category also includes registrations of terminal equipment and circuitry connected directly to the telephone network under Part 68 of the rules. International facilities include those licensees covered under Part 23 of the rules.

No. Payees: 69,325 Examples: GeoStar, Equatorial, AT&T, Pan Am Satellite, Q Media Paging, Answer Fort Smith, Inc.

Fee Computation: Total fee billed annually to licensees/call signs/stations.

Fee Category: Cellular Radio **Fee Amount: $1000/Yr.**

Category Description: Includes common carriers who are issued a license to provide cellular telephone service to the public using a block of radio frequencies under Part 22 of the Commission's rules.

No. Payees: 1,477 Examples: Cybertel Corp., Southwestern Bell Mobile Systems

Fee computation: Total fee billed annually by call sign.

Fee Category: Space Stations **Fee Amount: $50,000/Yr.**

Category Description: Includes licensed operators of satellite services using radio transmissions between satellites and earth stations for common carrier and private communications.

No. Payees: 35 Examples: GE American Communications, Hughes Communications, GTE Spacenet

Fee Computation: Total fee billed annually to licensees.

Fee Category: IXC (I) **Fee Amount: $2,000,000/Yr.**

Category Description: Interexchange carriers (long distance telephone companies) with 25,000,000 or more presubscribed customer lines.

No. Payees: 1 Example: AT&T

Fee computation: Total fee billed annually to applicable carriers.

Fee Category: IXC (II) **Fee Amount: $500,000/Yr.**

Category Description: Interexchange carriers with at least 1,000,000 but less than 25,000,000 presubscribed customer lines.

No. Payees: 2 Examples: MCI, U.S. Sprint

Fee computation: Total fee billed annually to applicable carriers.

Fee Category: IXC (III) **Fee Amount: $1,000/Yr.**

Category Description: Interexchange carriers with at least 65,000 but less than 1,000,000 presubscribed customer lines.

No. Payees: 17 Examples: Allnet, Metromedia Long Distance

Fee computation: Total fee billed annually to applicable carriers.

Fee Category: IXC (IV) **Fee Amount: $100/Yr.**

Category Description: Interexchange carriers with less than 65,000 presubscribed customer lines.

No. Payees: 280 Examples: Americall, Garden State Long Distance Co.

Fee Computation: Total fee billed annually to applicable carriers.

Fee Category: LEC (I) **Fee Amount: $1,000,000/Yr.**

Category description: Local exchange carriers with 10,000,000 or more access lines.

No. Payees: 8 Examples: Bell Atlantic Corp., Southwestern Bell Corp.

Fee computation: Total fee billed annually to applicable carriers.

Fee Category: LEC (II) **Fee Amount: $150,000/Yr.**

Category Description: Local exchange carriers with at least 100,000 but less than 10,000,000 access lines.

No. Payees: 15 Examples: Centel Corp., Lincoln Telephone and Telegraph Co.

Fee computation: Total fee billed annually to applicable carriers.

Fee Category: LEC (III) **Fee Amount: $1,000/Yr.**

Category Description: Local exchange carriers with at least 20,000 but less then 100,000 access lines.

No. Payees: 37 Examples: Roseville Telephone Co., Gulf Telephone Co.

Fee Computation: Total fee billed annually to applicable carriers.

Fee Category: LEC (IV) **Fee Amount: $100/Yr.**

Category Description: Local exchange carriers with less than 20,000 access lines.

No. Payees: 1,300 Examples: Shenandoah Telephone Co., Rhinelander Telephone Co.

Fee computation: Total fee billed annually to applicable carriers.

Question: How were these fees assessed? Are the charges for specific users proportionate to the requirements they place on the FCC's workforce and budget?

Answer: Proposed individual fee amounts have generally been determined based upon overall Commission costs to operate its enforcement, public service, policy and rulemaking and international programs. The fee amounts attributed to each major Commission activity bear a direct relationship to actual costs allocated to those activities. Individual fee amounts were at times adjusted to take into consideration such factors as reasonableness, fairness, balance between similar service categories and commercial versus non-commercial use of license.

Question: Are you certain that the administration's newly submitted appropriations language, if enacted, allows FCC to collect these new fees?

Answer: Section 8(g) of the Communications Act currently precludes the Commission from assessing and collecting fees except as set forth in the schedule of charges codified in existing section 8 of the Act. The newly submitted appropriations language serves to override section 8(g) by providing that, notwithstanding section 8(g), the Commission may collect additional fees. The appropriations language does not, however, contain a statutory standard to guide the Commission in assessing these additional fees. Thus, standing alone, the new language may not be sufficient to authorize fee collection which can withstand judicial scrutiny. For additional authority to collect the fees, the Commission theoretically could rely on the existing statutory standards in the Independent Offices Appropriations Act (IOAA), 31 U.S.C. § 9701, but fee collection under the IOAA is frequently litigated. Thus, to avoid potential litigation, a statutorily enacted fee schedule would be desirable.

Question: What are the penalties for not paying -- does a user lose their FCC license? Will it mean that public radio operators -- like a fire department -- would lose its FCC license?

Answer: Although specific non-payment penalties have not yet been developed for the proposed new user fee program, it is likely that a range of penalties and incentives will be utilized by the agency in order to insure prompt and efficient payment of annual fees. In certain services it may be most efficient to deny or to revoke a license for non-payment. To the extent that it is cost effective to do so, it is more likely that standard government debt collection methods would be utilized to collect outstanding amounts owed the Commission. These methods include warning letters, credit bureau reporting, additional penalty charges (including interest charges), and other collection techniques available to the agency. We do not envision public safety licensees losing their licenses due solely to non-payment of fees.

Question: One area that does trouble us a bit is your proposal to charge public and educational T.V. $100 a year -- these groups are largely funded by public sources. In fact, funded by this bill under your old agency -- NTIA in Commerce. Why do you feel public T.V. should pay fees given its clear public interest mission?

Answer: We have proposed minimal fees in these areas in the belief that all entities should contribute to offsetting the regulatory costs of providing Commission services to them.

Question: Your justification states that you will raise $71 million in fees, but only $65 million is applied to offset the budget. Why isn't the full amount used?

Answer: The Office of Management and Budget has proposed only that $65 million be applied to offset Commission costs. Estimated FY 1992 costs to the Commission to provide enforcement, public service, policy and rulemaking and international services to licensees and other beneficiaries total approximately $71 million, as shown in the Commission's FY 1992 Budget submission. Because neither the Commission's FY 1991 nor FY 1992 budgets contain resources to administratively collect the proposed annual user fees, the Commission is requesting approval to use up to an additional $2 million of the fees collected to fund the National Finance Center (NFC) billing and collection costs. Also, the amount to be collected from these fees are estimates. By setting the fee schedule to raise $71 million, we help ensure that the full $65 million is actually received. Of course, any funds above those to be retained by FCC would be turned over to the Treasury thereby reducing the national debt.

Spectrum Management and International Competitiveness

Chairman Sikes, the United States was the first country to significantly develop a telecommunications industry and to use up the electromagnetic spectrum. At present, our international competitors have more spectrum available and could gain an advantage in development of telecommunciations technologies.

Question: Would you agree that the abundance of available spectrum provides our international trading partners with a competitive advantage?

Answer: Until now, it has been the United States which has enjoyed a competitive advantage due to spectrum, because we have made much more extensive and efficient use of this valuable resource. Today, however -- precisely because they have underutilized spectrum -- our competitors are in a better position to accommodate the new and better spectrum technologies and services now being developed. Unless we adopt policies that can keep up with the rapid and accelerating changes in this area, the U.S. will be disadvantaged competitively.

Question: What strategies does the FCC have to retain our competitive edge?

Answer: We have several initiatives underway. First, we are working to make more spectrum available for commercial use. In addition to supporting reallocation of federal spectrum, we are in the process of identifying additional non-federal spectrum which can be freed up for new services. We are also working to expeditiously allocate spectrum for newly-developing services. These include high-definition television, digital audio broadcasting, and personal communications systems, among others.

Third, we are working toward using market mechanisms to ensure that this important resource be used efficiently, and thus best help U.S. competitiveness. For this reason, I have supported the auction of spectrum licenses -- a mechanism which would reduce delays in making assignments, and get licenses quickly into the hands of those who can best use them. At the same time, I've generally supported flexibility in our service rules to allow licensees to adapt quickly to new technologies. Because of our flexible cellular rules, for example, that industry has been able to move toward more efficient, digital, transmission systems with virtually no regulatory delay.

Selling Government Spectrum

I understand that the administration's outyear estimates for domestic discretionary programs include over $2.5 billion derived from the sale of Government's spectrum allocation.

Question: Could you elaborate on the administration's proposal? What is FCC's role in this reallocation vis-a-vis the Commerce Department's role? Is the $2.5 billion estimate accurate?

Answer: The Administration has proposed that frequencies now allocated for Federal Government use be reallocated for use by non-federal users. This will be extremely helpful to the American public who benefit from services provided through the use of the spectrum. The primary role of the Commerce Department would be to identify spectrum which can be reallocated for non-federal use. The Administration bill proposes that the FCC would then reassign existing private users to the frequencies thus vacated. The frequencies vacated by the private users would then be reassigned by the FCC.

It should be emphasized that this proposal does not contemplate the absolute "sale" of any spectrum. Any spectrum reassigned to private users would continue to be used only under the terms and conditions of the licenses granted. These licenses only grant the right to use frequencies for a limited period of time and for a use or uses determined by the Commission. While the licenses could be assigned through a competitive bidding process, such bidding would not transfer any property rights to the licensees.

It should also be mentioned that competitive bidding will allow substantially faster authorization of service than comparative hearings and would avoid the private windfall that often results from the use of a lottery.

Specific estimates of the revenues which could be derived from spectrum auctions is always a difficult task. Potential revenue would depend to a great extent upon the location of the spectrum reassigned and the services to which it is allocated -- issues which are not yet resolved. The $2.5 billion estimate made by the Administration, nevertheless, seems to be an entirely reasonable -- and perhaps even conservative -- estimate of the sum which could be raised by this proposal.

Question: Is the Administration still planning to "Auction" this spectrum?

Answer: The Administration plan does call for competitive bidding of the spectrum licenses made available by reallocation. The bill, however, specifically excludes license renewals, government entities, amateur users, public broadcasters and private radio end-users from auctions. More generally, the FCC would not assign any licenses through auctions where it finds such action not in the public interest.

Question: Could you provide an overview of what part of the spectrum would be made available and what you forecast it would be used for?

Answer: The part of the spectrum which would be reallocated from federal use and that for which licenses would be auctioned would be determined by the Department of Commerce and the FCC in their respective reallocation proceedings. The licenses auctioned, however, will most likely be for spectrum in the 1-3 GHz range. Among other uses, these frequencies could be used for a variety of mobile radio services -- including personal communications networks, wireless computer networks, and perhaps satellite-based mobile radio.

Increased FCC Personnel Levels

The Commission's budget requests an increase of 50 staff positions. These positions are proposed for Policy and Rulemaking, Enforcement, and Authorization of Service.

Question: From 1981 til 1990, the FCC was reduced by 402 full-time positions. Last year we added 50 positions, and with this budget you would have another 50. In what type of positions were the reductions made since 1981? Are we adding back positions to the same activities that were cut during the Reagan administration?

Answer: The staffing reductions that occurred during the 1980s were of sufficient magnitude to affect almost every organization and activity in the Commission. We are now trying to add positions back to those activities that have been subjected to the greatest workload increases and that provide the largest economic and social benefits. As indicated in our budget submission, without additional staffing, we would face unacceptably long delays in performing our most important regulatory functions.

Question: How is the quick changing nature of the telecommunications industry affecting the FCC? In which professional specialties do you have the greatest skill and training requirements?

Answer: Commission engineers and scientists are under significant pressure to develop and maintain currency with technological developments to which the Commission must address itself in a number of ways. The Commission's Office of Engineering and Technology and Field Operations Bureau see a critical need for their engineering personnel to acquire expertise in the areas of digital technology, stochastic signals and noise, high definition television, and electromagnetic interference and control, among other evolving technologies. Training in these areas, typically sponsored by universities and technical societies, is provided as funding permits.

In addition, the Commission sees a need to increase the productivity of its engineering and legal staffs in response to a significantly increased workload. Resources have been dedicated to providing specialized writing and computer training, as well as FCC-specific technical training for entry-level engineers.

Question: For the Record: Your budget status states that you have reallocated workyears due to decreasing workload and improved efficiency. Could you provide some specific examples?

Answer: Two examples of reallocations involve our financial management program and our private radio licensing function. Recently, the Commission implemented cross-servicing agreements with the Department of Agriculture's National Finance Center (NFC) to have NFC provide personnel/payroll and accounting services to the FCC. Previously, these functions were performed by FCC staff. The cross-servicing agreement has resulted in greater systems reliability and conformity with accepted accounting standards. It also allowed the Commission to transfer seven positions and redirect valuable data processing resources to other critical programs. In the Private Radio Bureau, the introduction of increased automation and other efficiencies in the license processing function have not only improved speeds of service during times of increasing application receipts, but also allowed the Bureau to reduce the staff complement by over 40 FTEs during the past decade.

Question: For the Record: What is the breakdown--by Job/Professional Title--for the 50 positions added in 1991 and the 50 positions requested in 1992?

Answer: The Full Time Equivalent (FTE) level for the Commission as authorized by the Office of Management and Budget (OMB) for FY 1990 was 1,750 FTEs. The FY 1991 allowance is 1,778 FTEs including 28 FTEs requested in the FY 1991 President's Budget.

During FY 1990 although the Commission was authorized to staff up to a level of 1,750 FTEs, due to delays in recruitment and significant attrition, we were able to utilize only 1,728 FTEs by the end of the fiscal year. Therefore, the difference in FTE levels between FY 1990 (1,728) and FY 1991 (1,778) reflected in the budget document is not the result of an increase of 50 FTEs for FY 1991. It is merely the difference between actual use and authorized ceiling levels for the two years. We do anticipate utilizing our authorized OMB ceiling in FY 1991 and have budgeted our resources accordingly.

In FY 1992, we are requesting 50 FTEs in the following occupations to support programs in three Activities:

Authorization of Service: 8 Attorneys, 5 Engineers, 4 Carrier Analysts and 3 Applications Examiners.

Policy and Rulemaking: 6 Attorneys and 4 Engineers.

Enforcement: 9 Attorneys, 4 Carrier Analysts, 3 Public Utility Specialists, 3 Auditors and 1 Financial Analyst.

New Technologies and Challenges

The 1991 Economic Report of the President seems to attribute growth in the telecommunications industry solely to deregulation. Yet, many of the changes since 1980--cellular phones, pagers, VCR's, telefax machines, use of fiber-optic cable, cable television, satellite dish receivers--seem to be the result of innovation and good marketing rather than deregulation.

Question: We have all heard about high definition T.V. or "HDTV", but what other new innovation in telecommunications do you see coming in the near future?

Answer: HDTV is only among many new telecommunications technologies and services we see on the horizon. Others include such things as personal communications networks, wireless local area computer networks, digital audio broadcasting, low-earth orbit satellite mobile telephone services, and broadband video and data services. This is probably only a small sample of the services which will be developed in the coming years. Because of the nature of the innovation process, we can be fairly sure that there will be many others in the near future which we have not yet imagined.

Question: What challenges will these changes create for the FCC?

Answer: I see two types of challenges. First, we need to act quickly to facilitate the development of new services. Specifically, with spectrum-based services, we need to act quickly to make frequencies available for their use.

Secondly, as regulators, we need to make sure that our rules are consistent with a world of accelerating change and innovation and that they do not impose unnecessary regulations. Our rules must be "innovation-friendly." Specifically, we need to ensure that we do not inadvertently hinder beneficial innovations through rules which unnecessarily "pigeon-hole" service providers into predetermined industry structures and technologies. Additionally, one of the principal reasons fax machines and satellite dish receivers developed so rapidly was because the Commission deregulated telephone terminal equipment in the late 1960's and 1970's and satellite earth stations in 1979, thus eliminating regulatory delay and allowing these services to proceed. In contrast, cellular telephone service in this country was delayed over ten years while parties and the Commission fought over the due process issues associated with licensing, a delay which may have cost the U.S. leadership in the cellular equipment field. These examples serve to illustrate both the benefits and necessity of avoiding unnecessary regulation.

Computer System Modernization

The FCC budget request proposes approximately $18 million over the next four years for information systems modernization. $2.2 million is requested this year and $8.5 million next year.

Question: Please provide a summary of what the Commission is proposing.

The FCC has deferred capital investments for data processing for several years and as a consequence, now has obsolete computers and information systems. In coordination with a planned consolidation of the headquarters staff in a new building in the Fall 1992, we seek to implement an entirely new information systems architecture to meet the agency's mission needs. The information systems modernization project includes mainframe, mini, and departmental computers in the central computer facilities in Washington, DC and Gettysburg, PA; end-user computer equipment; data communications facilities; conversion of databases and application systems; and implementation of new technologies such as electronic data interchange and document imaging.

We have established an acquisition support agreement with GSA's Office of Technology Assistance and have hired an experienced full-time project manager for the information systems modernization project. A contractor is completing a requirements analysis and will prepare necessary procurement documentation. We anticipate issuing a request for proposals in the Fall 1991 for a contract to design and implement the new information systems architecture.

Question: What specifically is the $2.2 million in FY 1992 proposed for?

Our budget request assumes a contract award no later than June 1992 to begin implementation of the new information systems architecture. Most FY 1992 costs will be for software conversion and basic computer facility equipment. Specifically, the $2.2 million requested for FY 1992 is for the following:

Begin conversion of information systems	$1,145,000
Minimum purchase and installation of central facility equipment and software	650,000
Minimum purchase and installation of communications equipment and services	150,000
Support contractor assistance	160,000
Training for ADP staff on new architecture	145,000
Total	$2,250,000

Telephone Service for U.S. Troops in the Persian Gulf

I recently cosponsored a resolution to reduce the cost of telephone service to our troops and airmen in the Middle East. As you may know Chairman Sikes, the Saudi's put a surcharge on long distance calls.

Question: What has the FCC been doing to help with this effort?

Answer: At present, AT&T pays the Saudi telephone administration $1.05 per minute for using Saudi telephone facilities. MCI pays the Saudi telephone administration $1.18 per minute for using Saudi facilities. Due to the inability of Saudi facilities to handle the increase in demand for U.S.-Saudi telephone calls, especially in more remote desert positions where a large number of troops were stationed prior to the ground offensive, U.S. carriers installed their own facilities (earth stations, pbxs, etc.). The Saudi telephone administration charges U.S. carriers $0.73 per minute under this arrangement.

At my direction over a month ago, FCC staff met with the U.S. carriers serving Saudi Arabia to discuss rate issues. We asked these carriers to renew

discussions with the Saudi authorities to lower the charges the Saudis place on each call. Furthermore, we also discussed these issues with the State Department and encouraged it to contact the Saudi authorities regarding the lowering of these charges (which it has done). For our part, we will seek to ensure that any reduction or elimination of these charges is reflected in the prices U.S. companies charge American military personnel in the Gulf.

Although the Saudi telecommunications administration has not yet taken action to reduce charges assessed U.S. carriers, two of the three carriers serving Saudi Arabia (AT&T and MCI) announced substantial rate reductions.

Common Carriers and AT&T

The latest figures show that AT&T has about a 65 to 70 percent share of the long distance market and this share is rising.

Question: Is the FCC still considering a proposal to deregulate AT&T?

Answer: Our latest industry report shows that AT&T's share of switched minutes is currently 63 percent. Over the last year, from the third quarter of 1989 to the third quarter of 1990, AT&T's share of switched minutes dropped by 1 percent. Moreover, analysts predict that, although the growth rate of switched minutes for the industry will fall slightly in 1991, MCI and Sprint will continue to see their respective shares of switched minutes grow at a rate above the industry average. This analysis suggests that AT&T will continue to lose market share.

Last year, the FCC initiated a comprehensive rulemaking proceeding to examine whether it should modify its regulation of the interstate long-distance market in light of the growth of competition since the early 1980s. The Commission then proposed to streamline the regulation of AT&T's services at the high end of the interstate long-distance market. Data relied on in the Notice of Proposed Rulemaking, and substantiated in the record, suggests that AT&T's share of this portion of the market is approximately 50 percent. Interested parties submitted voluminous pleadings in the proceeding, and the Commission is considering what changes best reflect the current state of competition in the long-distance market.

Fleetcall Waiver

Last year, I wrote to you, Mr. Sikes, about the Fleet Call waiver applications and reminded you not to use the waiver process as a way to avoid considering changes in FCC Rules. Recently, however, the FCC granted some of the Fleet Call waivers without initiating a rule making proceeding to consider all the issues.

Question: Why has the FCC not initiated such a rule making proceeding?

Answer: Staff analysis indicated that much of what Fleet Call was requesting by waiver was either already permitted under our Rules for the Specialized Mobile Radio Service (SMRS) or was in excess of what we would grant. The only waiver we granted to Fleet Call was an extension of time to construct from one to five years, based on the complexity of its proposed system. Such waivers are not uncommon, for example, the Association of American Railroads was given ten years to complete a nationwide Automated Train Control System. Additionally, the FCC Rules already recognize the need for longer construction periods for up to three years in most radio services. As systems continue to increase in complexity, we anticipate that construction periods will have to be adjusted routinely to match the requirements of the systems in questions.

On another issue, the 70 mile required distance between SMRS base stations, we have issued a Further Notice of Proposed Rule Making to consider adopting rules to allow short spacing of stations based on technical showings without waiver requests being required. If the provisions are adopted, Fleet Call would not require any short spacing waivers. The final area of relief for Fleet Call concerns use of digital identification rather than Morse Code or voice. This relaxation of the Rules is appropriate for all SMRS operators and will be addressed by rule making.

Our Private Radio Bureau is in the process of examining the Rules to look for other simplifications that may help put new technology on the air faster with a minimal regulatory burden. It is, however, a difficult task to craft Rules that anticipate yet unknown technologies. As this process continues, we will consider amending the Rules further, but no other amendments or waivers were necessary in the case of Fleet Call.

Tariff 12 Contracts

Two years ago, I wrote to the FCC concerning the so-called Tariff 12 contracts that the FCC was allowing to go into effect while they were under investigation. Recently, the Court of Appeals remanded the FCC's decision to let these tariffs take effect.

Question: Why is the FCC continuing to allow new versions of these tariffs take effect even though the court ruled that the tariffs may violate the Communications Act?

Answer: The Commission may permit Tariff 12 options to take effect because the Court of Appeals did not find Tariff 12 to be necessarily unlawful of itself. Rather, the court found that the Commission had not properly justified its findings with respect to the lawfulness of the Tariff 12 packages before it and thus remanded for further proceedings.

The Commission does not believe that it is desirable to preclude all post-remand Tariff 12 options from taking effect pending the outcome of the remand proceeding. Such a policy would cause unnecessary disruption in the marketplace and deprive customers of their ability to negotiate better rates and services. Customers would not gain by stopping competition for their business, only competitors would.

Pending completion of the remand proceeding, the Commission continues to examine all Tariff 12 filings by the general procedures established in its rules for dominant carriers. These options include rejection; suspension and investigation; investigation without suspension; or permitting an option to take effect. We have not eliminated any of these options with respect to a particular Tariff 12 filing.

Tariff 12 options that take effect while the remand is pending do so subject to the outcome of the remand proceeding.

FCC Organization

The FCC currently has several different offices that regulate the use of spectrum by public safety officers.

Question: Why doesn't the FCC combine these offices?

Answer: The various public safety radio services are regulated by our Private Radio Bureau. Public Safety regulations are contained in either FCC Rule Part 90 for two-way services or Part 94 for microwave services. We also have in place a Public Safety National Plan that allows public safety regional planners to work with our Private Radio Bureau to tailor channel assignments to the needs of the specific region.

Although the Office of Chief Engineer has overall responsibility for spectrum allocations among the various radio services, including broadcast, common carrier, and private radio, the Private Radio Bureau alone has delegated authority to oversee the public safety radio services. Similarly, the Field Operations Bureau enforces the rules relating to public safety channels, but under the guidance of the Private Radio Bureau. In our view, therefore, regulation of the public safety services is already centralized within the Commission.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

Question: Why has the FCC proposed to impose fees on public broadcasters and public safety licensees when Congress has exempted these groups from fees in the past?

Answer: The Commission has tried to develop a fee schedule that fairly represents the actual costs to the Commission of providing certain regulatory services to licensees and beneficiaries. Public broadcasters and public safety licensees receive a direct benefit from Commission regulatory activity and, therefore, a minimal fee is being proposed in these services.

Hawaii Monitoring Station Relocation

Question: What progress has the FCC made in re-locating the Hawaii Monitoring Station? When does the FCC plan to resolve this matter?

Answer: Public Law 101-396, FCC authorization for FY 1990 and FY 1991 required GSA to negotiate with the State of Hawaii for the fair market value of 37 acres of the monitoring station site. The costs of acquiring an alternate site and relocation of the monitoring antennas is to be paid for out of the proceeds of the sale.

The FCC has conducted an extensive survey of Oahu to locate an acceptable site to use for monitoring. No sites have been identified which meet all of the criteria; however, one site was found which may be acceptable, a site owned by Campbell Estates on the North Shore. In August 1990 the FCC contacted Campbell Estates to explore whether they would be interested in selling a portion of the land to the FCC. In late November 1990, Campbell Estates replied to the FCC and raised several issues which would need to be negotiated, such as, purchase of land rather than lease, protective boundaries, to minimize impact on the remainder of the Campbell Estates properties, price, etc. No further negotiations are possible with Campbell Estates until GSA has completed its negotiations with the State of Hawaii.

GSA wrote to the State of Hawaii, Board of Land and Natural Resources in October 1990, requesting that a meeting be scheduled to discuss the sale of the FCC property. A meeting was finally held in January 1991. No decisions were reached in that meeting due to the significant disparity between GSA appraised value of the property and the State of Hawaii offer ($19,900 per acre). Subsequently, the State of Hawaii sent a letter to GSA raising the offer to $30,000 per acre. GSA informed the State in February that this offer was unacceptable because it was still significantly below the appraised value of the FCC site.

A follow-up letter was sent by GSA to the State of Hawaii on March 11, 1991, which again indicated that the offer was unacceptable and that the amount offered would not begin to defray the costs covered by the legislation which calls for all relocation costs, including acquisition of an alternate site. Conservative estimates of this relocation, including acquisition of an alternate site, indicate costs will be several million, not hundreds of thousands of dollars. Only a substantial increase in the State's current offer would allow continuation of the negotiations.

We are currently awaiting a response from the State to GSA's latest letter. If the negotiations do not provide sufficient funding for the FCC to accomplish the move, then some alternative legislation may be required.

Common Carrier

Question: I continue to hear of concerns that the FCC's price cap plans for AT&T and the large telephone companies will create incentives that conflict with the policy of geographic rate averaging. Would the FCC support legislation to make geographic rate averaging permanent?

Answer: This Commission has repeatedly voiced our support for geographic rate averaging. We believe geographic rate averaging offers substantial benefits:

it ensures that interexchange rates for rural or remote areas will not reflect the disproportionate burdens that may be associated with common line cost recovery in these areas; it ensures that ratepayers share in the benefits of nationwide interexchange competition; and it contributes to the simplicity of MTS rates, allowing ready comparison of rates charged by various interexchange carriers.

We determined in both the AT&T Price Cap Order and the LEC Price Cap Order that the implementation of price cap regulation would not put geographic rate averaging at risk. Further, we have pledged that any attempt by AT&T to propose deaveraged rates would be subjected to full suspension, investigation, and fullest scrutiny. Any such filing, we stated, will be subject to the full 90-day notice period provided under Section 203 of the Act, and will be suspended for investigation for the full five-month period provided for under Section 204 of the Act. In the course of the investigation, AT&T would bear the burden of justifying its proposal, and, given our strong commitment to geographically averaged rates, the showing we will require will be difficult to meet.

Thus, we determined that AT&T will face this Commission's fullest scrutiny, a lengthy public proceeding, and the likely participation of interested parties should it elect to propose deaveraged rates. Finally, we stated that any decisions by this Commission that affect the geographic rate averaging policy will be given very careful consideration to assure that our universal service goals are met.

In view of these decisions, I believe that our policies already adequately guard against geographic rate deaveraging.

Question: The FCC is currently reviewing the restriction that prevents separate international satellite systems from interconnecting with the public switched network. What is the status of that review? Has the FCC considered conducting a study of that restriction to determine if it continues to be in the public interest?

Answer: Pan American Satellite has filed a petition for rulemaking with the FCC seeking removal of the restriction on interconnection with the public switched network. We placed the petition on public notice December 3, 1991. Comments were filed January 31 and replies on February 15, 1991.

On February 6, 1991, we received a letter jointly signed by the Departments of Commerce and State, requesting that the FCC postpone initiation of a rulemaking proceeding until the Executive Branch has completed a review of the existing separate systems policy. We will honor this request. The letter estimates that the Executive Branch review will be completed in 75 days and will examine the national and foreign policy implications of removing the restriction. If the FCC decides that a rulemaking or other proceeding should be initiated pursuant to an Executive Branch recommendation, this subsequent proceeding would certainly include a study to determine if the restriction continues to be in the public interest.

Question: The FCC is currently reviewing the "equal, per unit of traffic" provision contained in the Modification of Final Judgment. What impact will the elimination of this waiver have on the long distance market? Has the FCC compiled the cost data necessary to determine what effect the elimination of this waiver would have on the charges faced by long distance companies?

Answer: In January, the Common Carrier Bureau issued a Public Notice seeking updated information regarding such questions as the impact that elimination of the Commission's waiver of its access charge rules could have on the long distance marketplace. Comments were filed on February 22, 1991, and reply comments are due March 22, 1991. We are currently in the process of collecting and reviewing the information necessary to consider the implications of eliminating the waiver.

Mass Media

Question: Chairman Sikes, you have indicated that you are going to conduct an "attic to basement" review of the mass media rules and regulations. Is this review going to include any analysis of what broadcasters are doing to meet their public service obligations? Does the FCC have information upon which to conduct such analysis? Do you anticipate proposing changes in the multiple ownership or cross-ownership rules in this review? How many waivers of the duopoly rules has the FCC granted and/or denied in the top 25 markets?

Answer: This review is in part an outgrowth of the work the Commission has done in the cable television area. Television viewers are benefiting from the increased choice and diversity that cable television provides. At the same time there continues to be an important, undiminished role for the over-the-air television broadcasting service. Providers of this type of service, however, are increasingly disadvantaged in the marketplace. Broadcasting is a single channel service in an increasingly multichannel environment and is supported by a single source of revenue in a market where the competition has dual revenue streams, including both advertising and subscriber support. Moreover, some aspects of the applicable law, including especially the copyright law, significantly skew this competition and there is a disparity between Commission regulations and statutory provisions applicable to cable and broadcasting.

In the radio field, additional concerns arise because of the declining state of the AM radio service, the growth in competition, and the impending development of digital audio service offerings, including terrestrial, satellite, and cable audio services. The FM service faces a host of increasingly significant competitive chanllenges, including in particular, the increased number of FM stations resulting from our Docket 80-90 proceeding.

The initial phase of this review does not focus on any quantified review of station programming performance. Although information is available from public sources on some aspects of this issue, such as changes in the amount of television news programming, this type of information is not available from any forms filed with the Commission. The first phase of our review is addressing changes in the broadcasting environment that have taken place and will take place in the future due changes in technology, increased competition, the growth of multichannel service providers that may impinge upon the ability of broadcast stations to continue to provide service to the public.

The multiple and cross-ownership rules are one focus of the study. These rules are an important set among the disparate rules governing the competition between broadcast and multichannel providers. Changes in these rules are matters on which public comment will be sought.

The "duopoly" rules, as that term is generally misused by the Commission, prohibit commonly owned nonsatellite stations from having overlapping contours. A small number of waivers of these rules have been granted. For example, in Weigel Broadcasting Co., 4 FCC Rcd 6200 (1989), a waiver was granted to permit a UHF TV station in Milwaukee to increase its facilities in a manner that created some overlap with a commonly owned station in Chicago. In Channel 22, Inc. 4 FCC Rcd 7674 (1988), the owner of a television station in the New York City market was permitted to acquire a 10% interest in a Philadelphia station incident to a Chapter 11 bankruptcy proceeding. In Silver King Broadcasting of Vineland, 2 FCC Rcd 324 (1986), the licensee of a television station in Newark, New Jersey was permitted to acquire a station in Vineland, New Jersey that had a history of financial difficulties. In Capital Cities Communication, 59 RR 2d 451 (1985), a waiver was granted to permit the continuation of pre-existing ownership of television stations in Philadelphia and New York City. In Storer Communications, Inc., 59 RR 2d 611 (1985), the Commission granted a waiver to permit an overlap encompassing 1548 persons between stations in Detroit and Cleveland. These appear to be the only permanent waivers of this type relating to television in recent years. Similarly, permanent waivers in the radio context have also been granted, but only in a very limited number of circumstances. In this regard, it is pertinent that the applicable rules were amended in 1989 to prohibit common ownership only where the stations' "principal city" coverage contours (5 mV/m for AM stations and 3.16 mV/m for FM stations) overlap. First Report and Order in Docket 87-7, 65 RR 2d 1676 (1989).

Other ownership waivers in the top 25 markets involve the so-called one-to-a-market rules. In its Second Report and Order in Docket 87-7, 4 FCC Rcd 1741 (1989), reconsidered in part, 4 FCC Rcd 6489 (1989), the Commission created a presumption in favor of waivers involving radio and television station combinations in the top 25 television markets where there would be at least 30 separately owned, operated and controlled broadcast stations after the proposed combination was created. The Commission has issued seven decisions involving waivers of this type. In each case the presumption was followed and the waiver granted. See Capital Cities/ABC, Inc, 4 FCC Rcd 5498 (1989); WHDH-AM, Inc., 4 FCC Rcd 5795 (1989); Great American Television, 4 FCC Rcd 6347 (1989); Gulf Coast Radio, Inc., 5 FCC Rcd 87 (1989); Helen Broadcasting Company, 5 FCC Rcd 2829 (1990); Massachusetts Channel 46 Corporation, 5 FCC Rcd 3789 (1990); Channel One Communications, Inc., 5 FCC Rcd 6965 (1990); and Gillett Broadcasting of Maryland, 6 FCC Rcd 81 (1990). Two of these decisions involved pre-existing combinations and thus no net increase in cross-ownership. In one situation the sale involved was not consummated.

Question: When do you anticipate that the FCC will announce its decision on the cable effective competition proceeding?

Answer: I am hopeful that a decision will be made this spring, possibly at the Commission's May 9th agenda meeting.

Question: In the Commission's notice of proposed rulemaking on children's television, the Commission asked for comments on whether it should permit broadcasters to certify compliance with the commercial time limits and the obligation to provide programming aimed at children.

If you permit broadcasters to certify that they have complied with the commercial time limits, will you require that they maintain commercial logs in their public files?

Do you think it appropriate to permit certification of compliance with the obligation to air programming designed to meet the educational and informational needs of children?

Answer: I am unable at this point to indicate what rules the Commission finally will adopt to implement the Children's Television Act. The Commission, under the Act, is required to complete its pending rule making on this subject no later the middle of April of this year and we intend to meet that statutory deadline. Comments and reply comments responding to the Commission's Notice of Proposed Rule Making have only recently been received and are under active review. No final decisions have been made with respect to any of the issues in the proceeding.

The Commission's Notice of Proposed Rule Making did seek comment with respect to the possibility of certifying compliance with the commercial time limits and with the nature of the associated record keeping. The Commission noted that the legislative history of the Act indicated that traditional practices should be followed in enforcing these limits. With respect to the educational and informational programming requirements, the Commission noted this issue and parties were invited to address alternative methods, including a certification process that might achieve compliance with the requirements of the Act.

Question: As you know, there has been a great deal of discussion about the need for candidates to give substantive presentations on issues. The FCC has a request pending by King Broadcasting to permit back-to-back in depth presentations by and interviews of presidential and vice presidential candidates. The Court of Appeals has ruled that the FCC has the authority to permit such presentations. What does the Commission intend to do with this proposal?

Answer: In the pending proceeding, the Commission is asked to conclude that two types of political coverage are exempt from the equal opportunities provisions of Section 315 of the Communications Act. Two program formats are involved, both of which would be pre-taped "studio events." The first would be a one-hour program in which each of the two major party candidates would be allotted thirty minutes to present their essential campaign message. The second would involve separate in-depth, in-studio interviews with each of the candidates. The broadcast of such political coverage is, of course, entirely permissible under the Communications Act and the Commission's rules. However, Section 315 of the Act would normally require that equal time be afforded other candidates. Given the number of candidates, for example in Presidential elections, this would normally create sufficient difficulties to preclude coverage of this type. Statutorily exempt from the equal time requirements are: 1) bona fide newscasts, 2) bona fide news interviews, 3) bona fide new documentaries and 4) on-the-spot coverage of bona fide news events. There is involved in this statutory scheme a clear tension between the Congressional desire to provide equal opportunities for all candidates and the objective of facilitating substantive coverage of political issues. In this regard, the Commission is particularly concerned that it adhere as closely as possible to Congressional intent in interpreting the statute. In order to find these formats exempt, the Commission has been asked to conclude that they fit within the "on-the-spot coverage of bona fide news events" category. We are actively working on resolving the complex issues that are presented in making this determination and would hope to have the issue resolved well prior to the elections in the fall of 1991.

Question: On August 15, 1989, the Commission released a Notice of Proposed Rulemaking regarding Direct Broadcast Satellite ("DBS") services. The comment cycle in that proceeding was completed almost one and a half years ago. Among the issues presented in this proceeding was whether there would be DBS coverage for all of the States of the United States. When can we expect a decision on DBS from the Commission?

Answer: The comments received in response to this proposal have been reviewed by the staff and a recommended decision is in the process of being prepared for the Commission. I would expect a decision to be released sometime this year.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Question: There is increased interest in the concept of telephone company entry into the cable television industry. What effect do you think telco entry into the market would have on the level and cost of service for consumers? What effect would that have on technology? What would it mean for the FCC, in terms of increased enforcement and licensing responsibilities?

Do you believe the use of cross-subsidies would be likely if telephone companies gained entry to the cable television industry?

Answer: The issue of telephone company entry into the cable television industry is the subject of an on-going proceeding at the Commission, CC Docket 87-266. Extensive comments were filed in response to the Further Notice in that docket. In responding to your follow-up questions, please note that the Commission has not reached a final conclusion on whether existing restrictions on telephone company entry into the cable television industry should be modified.

Level and cost of service for consumers. Some industry observers express the view that there is a lack of competition in cable service which has resulted in excessive rates for cable service and lower than satisfactory service quality. These commenters feel that telephone company entry into the cable industry could have a beneficial impact in these areas. The Commission generally favors solving problems of market dysfunctions by increasing competition. However, while telephone company entry may increase competition in cable service, it is only one of a number of potential sources. Wireless cable, direct broadcast satellite, and fixed satellite service also

are potential sources of competition. There is a strong federal interest in promoting competition in cable service and in nonexclusive franchising because it would promote competition in cable television service.

Technology. A modern telecommunications infrastructure is vital to our nation, both domestically and in the increasingly competitive international marketplace. Telephone companies must, and should, play a leadership role in assuring that a significant component of the United States' telecommunications infrastructure is able to provide services necessary for us to remain competitive. The Commission has authorized a number of fiber-to-the-home trials to allow telephone companies to experiment with different kinds of new technology. These experiments will help the industry, and the Commission, to learn what potential technological advances are possible.

Enforcement and Licensing Responsibilities. In the Further Notice, the Commission did not propose to alter the requirement that telephone companies obtain prior certification under Section 214 of the Communications Act for construction and operation of facilities used to provide video programming. It is possible that allowing telephone companies to provide video programming could increase Commission workload in that area. The potential for increased enforcement responsibilities would depend on how telephone company entry into the cable television industry were accommodated. The number and kind of restrictions could also affect enforcement and licensing workload.

Cross-Subsidy/Cross-Synergy. A number of parties believe that permitting phone companies to offer a broader range of services including video transmission services could result in significant customer gains. They have stated that commercial synergies could produce more options. Fuller use of high-capacity facilities could reduce per unit costs and, indeed, result in lower, not higher prices. There are, in their view, significant potential gains, not merely possible downside losses. This presents one of today's challenges of unlocking the full potential of the network, maximizing the cross-synergy, and making the potential more fully available to the American public.

As previously indicated, the issue of telephone company participation in cable television has not yet been resolved by the Commission. The Commission, moreover, has long recognized that safeguards against cross-subsidization are necessary to protect consumers when telephone companies having substantial market power enter other markets. In the Further Notice, the Commission concluded that safeguards against cross-subsidization would be needed if telephone companies were allowed to provide video programming.

The Commission currently has in place accounting safeguards that effectively prevent cross-subsidization. These deter telephone companies from attempting to misallocate costs and enable auditors to identify misallocations. They also aid the Commission's efforts to keep interstate rates reasonable by facilitating benchmark comparisons among companies. In addition, the Commission has recently implemented incentive regulation for the largest telephone companies. Under incentive regulation, a telephone company no longer has a financial motivation to shift costs to its regulated rate base activities and cross-subsidize its unregulated activities. When regulated telephone service prices are capped, any costs which are misallocated or shifted cannot be recovered.

Question: Your budget estimates paint a grim picture of an FCC strained to its limit even with the requested increases. You say that major programs of the FCC have been reduced or slowed and that backlogs continue to grow. How will the proposed increase of 50 full-time employees redress these problems, and if you are seeking these new employees only for the Policy and Rulemaking, Enforcement and Authorization of Service areas, how will you address backlogs and deficiencies in other areas?

Answer: The 50 new positions requested for FY 1992 will help us significantly in reducing application processing delays while also expediting and improving policy and rulemaking and enforcement programs. The requested positions will meet the most urgent needs in these most fundamental program areas. This in turn will maximize the positive impact on the public, the regulated entities and on the economy as a whole. Although the Commission will likely require additional personnel resources beyond those requested for FY 1992, we have kept our request modest in recognition of overall budgetary and economic constraints facing the government. Also, improvements in our automation and technical equipment infrastructure, which are key components of this budget request, will enhance our efficiency and help address backlogs and deficiencies in all program areas.

Question: As you know, there is legislation pending which would, among other things, allow local authorities to regulate cable television rates under certain circumstances. This idea has a lot of support among many people in Arkansas, who believe that the monopolies most cable companies enjoy allow them to charge artificially high rates, and that local control would keep those rates at a more reasonable level. What is your view of that provision of the legislation, and what would it mean for the FCC in terms of enforcement, rulemaking and authorization of service?

Answer: In its six year Report to the Congress, Report in Docket 89-600, 5 FCC Rcd 4962 (1990), the Commission made specific findings and recommendations relating to changes in law and regulations that would address consumer concerns with artificially high rates and with the monopoly attributes of the cable television industry. The Commission found that the industry had made remarkable progress following passage of the 1984 Cable Act: investment increased, additional plant was put in place to increase systems reach, channel capacity increased, new programming services were offered and subscriber numbers multiplied. At the same time, however, the Commission concluded that a number of regulatory changes would be desirable to assure effective competition and to protect consumers during the transitional period while competition was becoming more fully developed. The recommendations include changes in the law to facilitate additional competitive entry both at the local level and through "wireless" cable and direct broadcast satellite operations, changes in copyright and local broadcast signal carriage policies to ensure unbiased competition between cable systems and broadcasters, and strengthened ability on the part of local franchising authorities to enforce customer service standards.

Although some changes in the law, consistent with the Commission's six year report would be desirable, it should be noted that in some respects the legislation that has been introduced would be burdensome for the Commission to administer, involving budget resources that the Commission does not now have the ability to absorb. Estimates as to the magnitude of the resources necessary vary depending upon the specific legislation involved. Detailed estimates, as submitted to the Congressional Budget Office, have been submitted for the record of this hearing in response to an earlier question.

QUESTIONS SUBMITTED BY SENATOR JIM SASSER

Question: I understand that the Commission recently instituted a proceeding to determine whether or not to retain the Modified Final Judgment provisions dealing with the access costs long distance carriers pay to local exchange carriers.

a. What will be the effect if the Commission does not act by Fall and the current regulations lapse?

b. What analysis will you include of how changes in these rules will affect competition in the long distance industry?

Answer: In the original access charge order, the Commission adopted rules for recovering costs of local exchange carrier transmission and switching facilities used by interexchange carriers to originate and terminate interstate traffic. A local exchange carrier can transport this traffic through facilities dedicated to the use of one interexchange carrier, or by combining dedicated facilities with facilities used in common by several interexchange carriers. The order directed carriers to allocate transport costs between two access rate elements: "dedicated transport" and "common transport," and established a system of usage sensitive rates for common transport and flat rates for dedicated transport. In 1983, the Commission waived these requirements in order to avoid a conflict with the Modification of Final Judgment's requirement that BOC charges for service between end offices and interexchange facilities be "equal per unit of traffic." Although the MFJ requirement expires on September 1, 1991, the Commission's access charge waiver will remain in effect while the staff studies the transport issue.

In January, the Common Carrier Bureau issued a Request for Information to Supplement the Record asking parties, among other things, to provide information concerning the impact that elimination of the waiver would have on the long distance marketplace. Comments were filed on February 22, 1991, and reply comments were filed on March 22, 1991. We are currently in the process of reviewing these filings.

Question: I understand that you are currently determining whether there should be further deregulation of AT&T. Could you give an update on that issue?

Answer: On March 8, 1990, the Commission adopted a Notice of Proposed Rulemaking to examine the state of competition in the interstate long-distance marketplace and the efficacy of our current regulatory framework in light of this competition. In that Notice, we proposed the further streamlining of our regulation of AT&T's services at the high end of the market -- the services we believed to be the most vigorously competitive. We also proposed permitting AT&T to make certain customer-specific offerings, where competition already exists. That proceeding is pending, and we anticipate taking action in the proceeding this year.

Question: Some are concerned whether the Commission will have the resources to adequately oversee a deregulated long-distance industry. How do you plan to allocate your resources in a time of tight funding constraints if full jurisdiction over long-distance telecommunications is returned to the FCC?

Answer: As we stated above, the Commission's proposal calls for further streamlining of the Commission's regulation of high-end business services alone. The steamlining proposal does not encompass services used primarily by residential and small business customers, or those services where barriers to competition still exist. Such services will remain subject to price cap regulation, which protects consumers by greatly reducing AT&T's incentives to engage in cross-subsidization. Therefore, we do not believe that additional resources will be necessary to protect consumers.

Indeed, to the extent that the Commission decides that it is appropriate to streamline further its regulation of AT&T's high-end services, we will be able to reallocate resources now devoted to the review of those services to other tasks involved in regulating the interstate services of long-distance carriers and the provision of interstate access by the local telephone companies.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Spectrum Auction

The President's budget includes bill language to reallocate 30 megahertz of radio spectrum currently under Federal government control to the private sector. These users, in turn, would be reassigned from spectrum now reserved for the private sector. The spectrum vacated by these users would then be reassigned through auctions beginning in fiscal year 1994.

Question: What private users would be reassigned to the spectrum currently under Federal government control?

Answer: This would be determined in an FCC rulemaking proceeding after the Commerce Department has identified the frequencies to be reallocated.

Question: Would these private users have a choice in their reassignment?

Answer: We cannot say at this time. The FCC has the legal authority to reassign private users involuntarily. However, as stated in our notice of inquiry regarding personal communications systems, we are interested in exploring methods by which spectrum can be made available on a voluntary basis.

Question: Would auctions involve users in the same class of service, or would the auctions be open to any service -- say, private radio vs. public safety -- with the winners being that class of service with the most money or most potential return?

Answer: Auctions would be for any specific service or services identified by the Commission. However, public safety services (as used in the example) would not be covered since the bill would prohibit public service from the auction proposal.

Commission Relocation

Question: The Commission is requesting $3.2 million as part of a consolidation proposal to relocate the FCC in one office building. Currently the General Services Administration has a solicitation on the street, but I understand you have not signed a lease for a new building.

According to the budget justification, GSA anticipates cost savings of $28 million over a 20 year period. That may be a cost savings to GSA; however, the cost to the Subcommittee of consolidation and relocation is projected to total $22.9 million over the next five years or so. In addition, as part of that consolidation, you are proposing a modernization of your ADP system which would cost approximately $17.5 million through fiscal year 1996.

-- What are the reasons a move must take place?

-- Is there any way to reduce the cost of the move, for instance by buying or recycling used furniture? (Systems furniture will cost $7.4 million.)

Answer: The leases for the Commission's present headquarters buildings, which were granted under fire/safety waivers, expire by March 1993. Even assuming the building owners are willing to renew, lease rates are expected to increase substantially and the government would most likely have to pay to have the buildings sprinkled. As indicated in the budget justification, comparing the estimated cost of consolidation with shorter term solutions, overall the government will save around $5 million. In addition to these measureable savings, significant intangible benefits are associated with providing FCC staff with a modern office building. For example, consolidation will save all the time now spent by FCC staff in travelling between buildings. A new building will improve morale and productivity. Modern voice, data and office automation capabilities can be provided to all headquarters staff with concurrent implementation of the Commission's Information System Modernization (ISM) program. It would be very costly to install the new system architecture in an old building. Finally, mush less time will be spent on fixing things that frequently break down in an old building, such as air conditioning systems.

The Commission has explored cost saving measures to minimize the cost of the relocation. We will be moving and rehabilitating furnishings for executives and senior managerial staff. However, systems furniture must be purchased for approximately 90% of the Commission's employees in order to meet reduced average space utilization rates mandated by GSA. The government would have to rent at least 30,000 sq. ft. of additional space if existing furniture were used for these work stations.

Staffing Increases

Of the increase of 50 full-time equivalent positions being requested by the Commission, 38 would go to the Common Carrier Bureau. This represents an 11.5 percent increase over 1991 and 23 percent increase over 1990.

Question: What are the needs that have generated this request, and where in the Common Carrier Bureau will these positions be assigned?

Answer: The rapid growth of the common carrier industry has provided the Commission with an enormous challenge. The resulting increased workload in the policy and rulemaking, authorization of service and enforcement areas is resulting in increased delays which slow the introduction of new services and technologies into the marketplace. This not only affects consumer choices, but also increases costs to producers of telecommunications services which are ultimately passed on to consumers. The Commission will assign 14 of the requested 38 new positions to authorization of service activities to improve speeds of service in the cellular, land mobile, multichannel multipoint distribution, domestic earth station and international satellite services. Four of the new positions would be used to speed the completion of our critical rulemaking activities such as the proceeding that will help ensure that our regulation of the long-distance market reflects the current state of competition. The remaining 20 positions would be used to increase and expedite enforcement related functions, including the processing of formal and informal complaints, the review of tariffs and the completion of additional common carrier field audits.

QUESTIONS SUBMITTED BY SENATOR MARK O. HATFIELD

Question: It is my understanding that last year the Commission proposed the deregulation of long distance under FCC Docket 90-132. Will you briefly describe to the Committee any developments in the industry since the public comment period for this docket closed in September that may be relevant to the strength of competition in the industry?

Answer: Last year, the FCC initiated a comprehensive rulemaking proceeding to examine whether it should modify its regulation of the interstate long-distance market in light of the growth of competition since the early 1980s. The Commission then proposed to streamline the regulation of AT&T's services at the high end of the interstate long-distance market. Data relied on in the Notice of Proposed Rulemaking, and substantiated in the record, suggests that AT&T's share of this portion of the market is approximately 50 percent.

Since the record closed in September, both of AT&T's chief competitors have shown the ability to bounce back from disappointing quarters in spite of the current economic slowdown. In January of this year, US Sprint announced that its minutes of use increased by 23 percent in 1990, a pace well above the growth rate of the overall industry. Likewise, MCI seems to have rebounded from a poor third quarter in 1990. MCI recently announced that its fourth quarter revenues grew 17 percent compared to its fourth quarter revenues in 1989. While MCI does not release market share growth data, industry analysts generally predict that MCI's market share will continue to grow at a faster rate than the industry. One indication that MCI has rebounded from its third quarter problems is that the price of MCI's stock has risen from 20 1/2 on December 7, 1990, to 27 1/4 as of March 11, 1991.

Although the comment cycle has ended, we are continuing to monitor the industry closely. Any developments that affect the strength of competition in the interexchange marketplace will be carefully considered in our deliberations.

Question: In 1989, the FCC eliminated traditional rate of return regulation and substituted a system of price caps. It is my understanding that the Commission is now considering a proposal for further streamlining regulation of AT&T's long distance business.

Mr. Chairman, many of AT&T's competitors contend that the company retains significant historical advantages over its competitors in the following areas: quicker call connect time; lack of 800 number portability; cheaper access through dedicated transport lines; established international agreements with foreign telecommunications authorities; and bundling of services with AT&T equipment.

While I understand that these are complicated issues that the Commission is very familiar with, could you briefly comment on these alleged advantages?

Answer: The Notice of Proposed Rulemaking specifically asked for comment on the underlying cost structures of industry participants and on barriers to competition in various market segments. We are looking very closely at the comments directed toward these issues, including the specific areas you mention. While AT&T's competitors are quick to point to alleged advantages accruing to AT&T as a result of its former monopoly status, it is worth noting that AT&T's historic position in this country can also work as a disadvantage. For example, AT&T has a larger work force to pay, its work force has a longer history of successful collective bargaining for higher pay, and it must make pension payments to a large number of retirees. AT&T is also faced with maintenance expense for older equipment, higher depreciation expenses, the costs of providing universal service, and the administrative costs associated with the filing of tariffs.

Question: Clearly, because of its historic position in the telecommunications industry, AT&T remains the most regulated long distance company. Could you briefly comment on what areas of AT&T's business remain regulated as opposed to its long distance competitors and if these regulations put AT&T at a competitive disadvantage?

Answer: The FCC currently regulates all aspects of AT&T's common carrier service. By regulating its common carrier services, the Commission may place AT&T at a competitive disadvantage by denying or delaying its ability to decrease rates or introduce new service offerings. The current regulatory system also inhibits AT&T's ability to make single customer offerings tailored to a particular competitor's needs. While Tariff 12 has given AT&T some marketplace freedom in making competitive bids for the right to serve large business users, its legality has been challenged in court and is currently on remand at the Commission. AT&T is also limited in the types and combinations of services it may provide under Tariff 12. The single customer offering proposal in the current Notice of Proposed Rulemaking seeks a solution that will enable AT&T to make competitive single customer offerings without the legal and regulatory delays that have been historically associated with Tariff 12.

Question: Mr. Chairman, my question is two parts, firstly, the Administration's FY '92 budget request for the FCC proposed the collection of new fees from communications licensees. Can you explain to the Committee if new statutory language will be required to authorize the Commission to collect these new fees, and if so, what that language would entail?

Answer: While the newly submitted appropriations language serves to override section 8(g) of the Communications Act (which currently precludes the Commission from assessing and collecting fees except as set forth in the schedule of charges), the appropriations language does not contain a statutory standard to guide the Commission in assessing these additional fees. Thus, standing alone, the new language might not be viewed by the Courts as sufficient to authorize such fee collections. Statutory language would have the advantage of clarifying Congressional intent and of reducing the likelihood of judicial challenges to the proposed fees. Legal challenges to the fee schedule could severely delay implementation of the new fees.

While we have had a number of discussions with both Appropriations and Authorization Committees staff, no language has been developed, as yet.

Question: Secondly, in your view, is this proposed new statutory language something that can or should be included in an appropriations bill or do you think this should require separate authorizing legislation out of the Commerce Committee?

Answer: While separate authorizing language may not be required, as stated above, we believe it would be helpful to avoid judicial challenge. Any proposed statutory language could be included in our regular appropriations bill to ensure that the Appropriations Committee is credited with the offsetting collections, but could be agreed to by the Commerce Committee.

LEGAL SERVICES CORPORATION

STATEMENTS OF:
GEORGE WITTGRAF, CHAIRMAN
DAVID H. MARTIN, PRESIDENT

ACCOMPANIED BY:
SENATOR EDMUND S. MUSKIE, CHAIRMAN OF THE MAINE COMMISSION ON LEGAL NEEDS
KIM TAYLOR, PUBLIC DEFENDER FOR THE DISTRICT OF COLUMBIA
L. KINVIN WROTH, CHAIRMAN OF THE STEERING COMMITTEE, MAINE COMMISSION ON LEGAL NEEDS

OPENING REMARKS

Senator Hollings. We will now hear testimony for the 1992 budget request for the Legal Services Corporation. Here on behalf of the Legal Services Corporation is the Chairman, Mr. George Wittgraf and the new President, Mr. David Martin.

Also appearing in support of legal services is our distinguished colleague, Senator-Secretary Muskie.

Ed, Justice Powell kept the legal services program alive. Maybe you can give it credibility. [Laughter.]

And, I have got the tiger here. We just tie him in the corner, and he gobbles up the Corporation every time they come in.

Senator Rudman. Not today.

Senator Hollings. Not today?

Senator Rudman. No; hopefully it is a peaceful day.

Senator Hollings. Well, let me add that the program has been kept alive by Senator Rudman, no question about that. But, we welcome our former colleague back who has held so many distinguished positions, I am glad he has interested himself in this one. It is one of vital interest to us in the Congress.

We also have Ms. Kim Taylor, the public defender for the District of Columbia. The Corporation has requested a funding level of $355 million for fiscal year 1992. This represents a $27.8 million or 8.5 percent increase in funding over both last year's level and the administration's fiscal year 1992 request.

Let me point out that this budget request is unique in that, for the second year in a row, under the leadership of Chairman Wittgraf, the LSC Board has requested an increase in funding for basic legal services as well as funding for regional training centers, State and national support centers, and other support services vital to the delivery of legal assistance to the poor.

Senator Rudman?

Senator Rudman. I just want to welcome everyone here. I had a meeting with Mr. Martin yesterday and, of course, I have known Mr. Wittgraf for some time now. I am very hopeful that we can have a very constructive relationship with legal services, that the

Congress can keep its hands off Legal Services Corporation and the Congress can let the Board and the president cooperatively run this Corporation. That is my hope.

As the chairman has referred to over the last 10 years since the majority of the Board generally wanted to destroy the Corporation rather than making it constructive, we have had to take a different role.

But hopefully, that will be over and time will tell. Of course, we are delighted to have Senator Muskie, the former dean of the Maine Law School with us, and also the public defender of the District of Columbia. We should just listen to what they have to say.

Senator HOLLINGS. Very good. Mr. Wittgraf, we are ready to hear from you or however you wish your panel to address us.

Mr. WITTGRAF. I think perhaps I will begin, followed by Mr. Martin, the Secretary and finally, Ms. Taylor. That is my understanding.

Senator HOLLINGS. Very good.

Mr. WITTGRAF. I trust that Senator Rudman's ongoing involvement with Legal Services Corporation means he has to seek reelection; is that right? [Laughter.]

Senator HOLLINGS. Yes; I hope he does. He has been ruminating over that at the Ethics Committee and that work will get anybody down. [Laughter.]

Mr. WITTGRAF. It is good to know that there is something that has caused him more trouble than the Legal Services Corporation.

Senator RUDMAN. Barely.

Mr. WITTGRAF. Barely?

Senator RUDMAN. Yes.

Mr. WITTGRAF. It was my pleasure to be here with you gentlemen last April, not quite 1 year ago, and at that time I came as a recess appointee, 1 of 11, including a former colleague of yours, John Erlenborn, who last year was the vice chairman of our Board.

At the moment, we are 11 Board members who again are recess appointees. One difference between this year and last year is that the eleven recess appointees were nominated by the White House in early February, just over 1 month ago. At some point this spring, hopefully, the Senate Labor and Human Resources Committee will begin its deliberations regarding our possible confirmation. Even though we were recess appointees last year, we did accomplish a few things.

SELECTION OF NEW PRESIDENT

Our first task and greatest task was the selection of the new president. The outgoing president, Terrance J. Wear, was with me at this time last year. He completed his service at the Corporation on June 30 of last year and Mr. Martin, whom I will introduce in a moment, began service as the new president this past October.

We think that was probably our largest accomplishment. As you noted, Senator Hollings, we did ask for a budget increase last year. The Congress gave us a slight increase. We have asked for a budget increase again for fiscal year 1992, which Mr. Martin will describe. We think that clearly there is an unmet need and, to the extent possible, the Congress needs to do more for the funding of the some 325 legal services grantees across the country.

The bulk, more than 90 percent of the moneys appropriated to the Legal Services Corporation, of course, go to the field. That is the way we believe it should be.

We would like to think that as 1990 went on, the Legal Services Corporation, both the Board and the new president and his staff, began to establish a new constructive, working relationship with the legal services grantees across the country. As you might imagine, during the last 10 years, a great deal of mistrust developed between the Legal Services Corporation, the Board and its staff, and the field.

While there is still a certain wariness, I would like to think that we are moving toward a more constructive and a collaborative relationship, rather than a destructive or antagonistic relationship.

SECTION 606—REPROGRAMMING INSTRUCTION

Senator HOLLINGS. On that particular point——

Mr. WITTGRAF. Yes, sir.

Senator HOLLINGS [continuing]. Section 606, the reprogramming provision, what is your view of that? We have had all kinds of difficulties with the chairmen of the legal services from time to time.

Mr. WITTGRAF. Generally, Senator, I think that is something that this Board and this president and his staff have not felt the need to utilize.

Senator HOLLINGS. If utilized, you would be checking with us, as provided under section 606, with this committee here—on reprogramming?

Mr. WITTGRAF. Yes, sir; there has been relatively little of that during the last year. I think there will continue to be relatively little of that, and certainly with regard to the notice requirement, we will continue to do that.

In fact, part of our new Board's relationship with our new president is a comparable kind of internal working arrangement with the moneys that Mr. Martin is responsible for, which we call management and administration. We are hoping that he will come to the Board, expecting him to come to the Board, when he reprograms his moneys, just as you expect the Corporation to come to you. Certainly, we will do that. I don't expect there will be very much of that. There was not last year, and I don't think there will be much of that either, during the balance of fiscal year 1991 or fiscal year 1992.

Senator RUDMAN. If I could just interrupt on that point, because it is a very important point that the chairman raises. In many ways there is a great similarity between this argument and the argument we had here about 5 months ago—it wasn't that long ago—2 months ago as to whether or not the President ought to come to the Congress to seek authorization for the war.

The President said, "Well, I really don't have to do that. I have the powers of Commander in Chief." He may be right, because nobody will ever know until the Supreme Court rules on that. The Congress said, "We think you are wrong, but you may be right, but you would be a lot better off to do it." Well, he decided do it, and the results are self-evident.

Whether or not the Corporation is bound to comply with the reprogramming provisions in our bill, I just don't know. But I can tell you this much: It is a very good idea to do it because of the results. That is what I am saying.

Mr. WITTGRAF. I think our view is to be open and communicative, both with the field, to whom the moneys go, and with the Congress, from whence the moneys come. I think we have moved in that direction this past year, and it is certainly our intention to continue to work in that way.

Senator RUDMAN. I didn't mean to interrupt the chairman.

Senator HOLLINGS. I didn't mean to interrupt you. Go right ahead.

Senator RUDMAN. If you can.

Mr. WITTGRAF. As I indicated a moment ago, our major accomplishment in fiscal year 1991 was the employment of the new president. We also asked for more dollars, and some of those additional dollars were granted to us.

We are asking for increased funding for fiscal year 1992. We think, certainly, the need is there, and some of the other panelists will speak to the particulars of that need.

Let me introduce David H. Martin, whom you have met briefly and who visited yesterday, as he indicated, with Senator Rudman. He comes to this position with a great deal of Government experience, and also, importantly, comes without any involvement in the wars, one side or the other, that were fought during the 1980's.

As a Board, when we selected Mr. Martin, we thought that was important, because he came with no prejudgments, no biases, no prejudices, and he has spent a great deal of his early days with the Corporation getting into the field himself and trying to establish communication with the grantees who receive these Federal dollars.

He plans to continue this effort through this year and throughout his tenure. I think that is probably one of the most important things he can do in having us working together, rather than at odds with one another. Let me conclude at this point by introducing Mr. Martin. He will speak more specifically to our budget recommendation, and I will be delighted to respond later, to any questions or comments that either of you gentlemen may have.

At this time, Mr. Martin.

PRESENTATION OF BUDGET REQUEST

Senator HOLLINGS. Go right ahead, Mr. Martin. Welcome.

Mr. MARTIN. Thank you, Mr. Chairman, Senator Rudman. It is a pleasure to be here to present the Corporation's budget for 1992. This committee has provided instrumental backing for the Legal Services Corporation in the past, and we look forward to your continued support.

Let me begin by saying that I think the debate about the continued existence of the Corporation is over. We are confidently looking forward now to improving access of poor people to our judicial system, and with that goal in mind, as the chairman indicated, we are requesting a $355 million budget for fiscal year 1992.

Of this amount, 91 percent, or $324.4 million, will be used for the direct delivery of legal services, our basic and supplemental field programs, native American programs, migrant programs, and our

Law School Clinic Program, which has been very successful. This is a 7.9-percent increase, over fiscal year 1991.

Let me just outline very briefly some of the numbers and the kinds of providers involved in each one of these services. The basic field programs will receive $302,538,000. The 294 basic service providers are the actual law firms, if you will.

For native American programs, there is $8,030,000. There are 32 of those. For migrant programs, we request $11,090,000 for 41 grantees.

PROGRAM TO SERVE THOSE IN THE ARMED FORCES

Senator HOLLINGS. Mr. Martin, at that point, how about Desert Storm? Did you set up a temporary category for that for these several months here? Many soldiers and their families have got all these difficulties coming back and they need the help, and you could help us immeasurably here if you set up a little category for Desert Storm applicants, those needing legal advice and/or counsel.

Mr. MARTIN. Mr. Chairman, we are aware of that, and have discussed it. In fact, a number of program directors have discussed it and they are aware of the need. I think, based on what we have for fiscal year 1991, the need is now. We are going to try to ensure that those needs are met. I have met with the program directors, and they are going to fit that into their budgetary system.

Senator HOLLINGS. Let's do our best to do it. We have got to get something in the supplemental or whatever.

Mr. MARTIN. I will, and I will report back to you, Mr. Chairman.

Senator RUDMAN. Mr. Chairman, if I could interject again.

Senator HOLLINGS. Go ahead.

Senator RUDMAN. It is an interesting issue. I was informed that most of them will not qualify under the current minimum income requirements. In other words, you have to be below a certain income level to qualify for legal services. It is a credit to the Congress—10 years ago, they all would have qualified, but as a result of what we have done with the pay, you will find that a fairly small number are going to meet the income criteria.

The American Bar Association, I understand, is setting up something on a pro bono basis to try to address these problems, because your point is well taken. They do need a lot of help.

Mr. MARTIN. We do and we, of course, encourage pro bono and private attorney involvement, and we will be doing that.

Senator HOLLINGS. You have got outreach efforts that you can program to do this?

Mr. MARTIN. We do, and let me say though, Senator Rudman, that I have been speaking with the program directors. I have a little group that I bring in once every quarter that I call my forum, and it is made up of program directors from large programs, midwestern, small and rural programs. When I raised this with them, they said, "don't think that we are always going to be the good guys because some wives and children may be suing their fathers because of nonsupport."

There might be some controversy. I just warn you that it does not always cut one way, so wives and children might qualify if there is a nonsupport problem there. That takes care of that. It will not be a noncontroversial issue.

If I could continue; last year, the Corporation provided grants to 20 law schools for our law school clinic program. This year, we request $1.3 million for this program. Apart from direct delivery of legal assistance, the Corporation is asking for $19.5 million for support services and $714,000 for five regional training centers.

To support State grants for training and litigation, the Corporation requests $8,968,000. There are currently 67 of those grants. Finally, but not least of all, we have computer-assisted legal research programs. There are six of those, with a total funding request of $584,000.

For Corporation management and administration, we request $10 million. We are planning on a carryover of $1.5 million for a total management and administration budget of $11.5 million. In addition, the Board is seeking $1.1 million for Board initiatives, which would involve studies on timekeeping, perhaps competition, and, if it receives regulatory authority, upon confirmation, the Board will undertake, I am sure, a number of other issues.

PRESIDENT MARTIN'S GOALS

Let me just briefly share with you my personal goals, and then I will be glad to take questions or yield to the other panelists. My first goal is to reestablish trust in the legal services community. I think that there has been too little trust, and it has been obvious to all parties. I believe I can be successful in restoring trust if I succeed in establishing communications that are direct, clear, and in good faith.

Since becoming president 5 months ago I have visited a number of programs. I have been to Denver; I have been to Seattle; I have been to Minnesota; I have been to New York and West Virginia. I plan to go to Cleveland and to Mississippi to visit client-eligible individuals and to talk to program directors to get their views on the issues. I get plenty of views from my own staff, but I am also reaching out to understand the point of view of the programs.

I think I have done a pretty good job of that so far. I also have brought this forum in on a rotating basis. I intend to meet every program director in the Legal Services Corporation umbrella. The point is, I am reaching out and seeking to understand all the issues. Hopefully, with the Board and my effort to reach out, we can reach a consensus on the issues that are important for the future of the Legal Services Corporation and its increased funding.

This budget request is submitted to you in that spirit. I trust that by the end of my tenure as president, the discussion will no longer focus on how to make the Corporation and our programs credible, effective, and efficient; but rather, on how to use our credible, effective, and efficient programs to better meet the legal needs of the poor.

With that, I conclude my statement and thank you very much for allowing me to appear.

Senator HOLLINGS. Very good. Senator Muskie?

FINDINGS OF THE MAINE COMMISSION ON LEGAL NEEDS

Senator MUSKIE. Mr. Chairman, Senator Rudman, I appear here not as a former colleague but as chairman of the Maine Commission on Legal Needs for the Poor and as a spokesman for the New England Bar Foundation which is made up of representatives from each of the six New England States.

Basically, what I want to emphasize here this morning is findings of the Maine commission. It was created in May 1989. Last year, the commission, established by nine law-related organizations, conducted a study of the relationship between poverty and access to justice in Maine, and on May 1, 1990, the Maine Commission on Legal Needs issued a report, and a copy of that report is attached to this statement.

After telephone survey, hundreds of questionnaires, dozens of interviews, and eight public hearings, we found that relationship to be distressingly direct and simple. The public and private legal services available to the poor are wholely inadequate to meet the need. The needs of the poor for legal services are steadily increasing as funds to meet them remain static.

There is one fact that troubles me as a citizen of the United States, as well as my own State, and as a former Member of this body, more than any other. That fact is simply this: That the findings of the Maine study are not unique to my State. The desperate need for civil legal services that exists in Maine also exists in virtually every State and jurisdiction throughout the country.

I would like to begin by providing you with a brief overview of the findings of our commission, which are critical to any conclusion we might draw about the program.

One, 19½ percent of Maine's population falls below 125 percent of the federally established poverty level. This translates to approximately 85,000 households; two, we found Maine's poor experienced more than 80,000 legal problems in the study year; three, for 77 percent of the total problems experienced, no legal assistance of any kind was received; four, 65 percent of the total legal problems reported involved basic necessities, income maintenance, employment, health, utility problems, housing, and education.

And, five, the instances of multiple problems among households reporting legal problems was significant.

Some of the stories we heard in those public hearings were about how some of these people were batted around from pilar to post, from one legal problem to another, without assistance and without any guide as to where assistance may be found.

Interestingly, poor persons living in a city in which a legal services office is located were nearly twice as likely to obtain assistance and six times more likely to have free legal services than those not living in such a location. Seven, households headed by a single, female parent reported significantly more problems than did either other households with children or other households without children; eight, there is one paid legal services lawyer for every 6,500 individuals living in poverty in Maine. By contrast, there is one lawyer for approximately every 400 individuals in the population as a whole.

In Maine, legal services are provided by the Volunteer Lawyers Project; Legal Services for the Elderly; the University of Maine Law School Clinic; and the single statewide legal services organization, Pine Tree Legal Assistance.

During the past decade, there have been significant changes in sources and amounts of funding for legal services for the poor in Maine. Funding to support legal services for the elderly, to support voluntary representation by the private Bar, and to support law student representation have increased. Funding for the sole Legal Services Corporation provider, Pine Tree, is decreasing.

The major cutbacks in Federal funding in the 1980's forced a retrenchment in services by Pine Tree from which it has never recovered. Pine Tree's staff was reduced by 35 percent between 1980 and 1984. State assistance, IOLTA funds, and small increases in Federal funding improved staffing lightly from 1984 to 1988.

But the current staff levels remain 21 percent below the 1980 levels.

Federal funding for the Pine Tree legal services program decreased both in actual dollars, 4.3 percent, and constant dollars, 34 percent, from 1980 to 1988. And, during that time, the poverty population in Maine increased by approximately 7 percent.

The most basic conclusion of our study: We don't meet the demand even with a maximum commitment of the private bar to unpaid pro bono legal services. The total legal needs of the poor can only be met by major increases in the number of paid attorneys employed by statewide legal services providers and the addition of necessary supporting staff and facilities.

We are a long way from meeting that even in terms of what we hopefully look to the Congress to provide. In addition to the documented pro bono service throughout organized programs, the private bar provides service by its own initiative. The extent of that service is considerable, according to information obtained at the public hearings, yet it remains undocumented in Maine, as elsewhere. The private bar has taken steps to respond to the need, and more will be done.

The report that I attached to this statement contains a number of recommendations directed to the Congress, the Legal Services Corporation, the organized bar, the Governor, the State legislature, the courts, current legal service providers, and the people of Maine which, if fully implemented, would substantially increase the resources available, but even with a full implementation of all the recommendations, the poor in Maine would still not have equal access to legal services.

While we recognize that the Federal Government, like State and local government, business, and individual citizens faces a difficult economic situation resulting in the need to carefully scrutinize new spending initiatives, we, nevertheless, urge you to consider appropriating a substantial increase in funding for the legal services program which now stands at a modest level of $327 million.

In 1981, funding reached $321 million, which met the minimum access goal of providing the equivalent of two legal services lawyers for every 10,000 poor people nationwide.

The next year, funding for legal services was cut by 25 percent and the program did not achieve its previous dollar level for another decade.

In 1991 dollars, which accounts for inflation during the last 10 years, it would take $744 million, or 228 percent of the current funding level, to provide the same legal services resources as were available in 1981.

The legal services community has requested an appropriation of $475 million for fiscal year 1992. This increased funding would bring the program only one-third of the way back to the goal of minimum access.

The American Bar Association has requested an appropriation of $425.6 million. This amount would bring the program back only to the level reached in 1984, after the 25-percent reduction in funding. Including an adjustment for inflation that has eroded its resources since that year, it would restore only one-quarter of the amount needed to meet the minimum access goal that was achieved in 1981.

ESTABLISHING BUDGET PRIORITIES

I will submit the rest of my statement for the committee's consideration. But I would simply like to say this: Having served as chairman of the Senate Committee on the Budget, having been involved in the money problems we had back then, I understand that the prospect of raising total spending looks pretty dim. I think what we are faced with here, among other possible alternatives that the Congress hopefully will identify, is a clear view of what our priorities are.

I suspect that in the past, we have been a little too loose in assessing priority urgency to various subjects. I am not going to sit here and suggest to you what program to cut or what programs to increase and what programs to eliminate. That isn't the point. I simply want to emphasize the point that, to me, this is a high-priority matter.

We have so many slogans that say that to us about our history, equal justice for all, every man is entitled to equal justice for all. We have that in the Maine Constitution. I suspect that same sentiment exists in every State.

We know we now are in the midst of a great surge in confidence in our country and its potential for dealing with problems as a result of the Persian Gulf war. We need to apply that same confidence to other problems, and among the basic priority problems, as I see them, is this one. These people are absolutely defenseless.

In addition to the basic problems that we speak of here, they deal with the domestic violence problems that occur everywhere. Those are more visible to all of us in this country everywhere. Usually, it is the poor woman with children who has to deal with the legal problems of bringing her husband or her former husband to bar and to justice. So with all of that, to worry about income, to worry about health, to worry about food, to worry about rent and all the rest of it, this is basic justice that we are talking about.

The Middle East has focused our attention upon the human needs abroad. We have these human needs here. I know the committee will look at this carefully, and I am not going to belabor you with any righteous indignation at this point. I said on the record how I feel very strongly.

[The statements follow:]

STATEMENT OF DAVID H. MARTIN

Mr. Chairman and members of the Subcommittee, I am pleased to appear before you to discuss the Corporation's budget request for fiscal year 1992. This Committee in the past has provided key backing for our programs, and we appreciate the spirit of communication and consultation from which we have benefited, and look forward to your continued support.

Now that the debate regarding the continued existence of the Legal Services Corporation is over, I am confident that the budget you eventually approve will enable us to focus more clearly on the best ways to provide the poor with access to our judicial system.

With that goal in mind, we are asking this Committee to approve a $355 million budget for fiscal year 1992. Of this amount, $324.4 million, or 91 percent, will pay for the direct delivery of legal services by basic and supplemental field programs, Native American programs, Migrant programs, and law school clinics. This amount is a 7.9 percent increase over fiscal year 1991 appropriation levels.

Let me address the individual program and funding levels proposed.

For basic field programs, the Corporation requests $302,358,000 for fiscal year 1992. This amount is an increase of $22,044,000 over the amount of funds available for this purpose in fiscal year 1991.

The Corporation also requests $8,030,000 for fiscal year 1992 grants to programs providing legal services to Native Americans. This amount is an increase of $585,000 over funding levels in fiscal year 1991.

For Migrant programs, the Corporation requests $11,090,000, an increase of $808,000 over fiscal year 1991.

During calendar year 1989, the Corporation received several requests from legal services programs recovering from damage sustained during Hurricane Hugo and the California earthquake. To prepare for emergency requests like these in the future, the Corporation proposes setting aside a reserve of $500,000.

The Corporation also requests $2,401,000 to fund supplemental programs for the direct delivery of legal services. This includes $1,250,000 for law school clinics and $1,143,000 for supplemental field programs.

Last year, the Corporation gave grants to 20 law schools for their clinical programs, including programs at Northwestern University, Gonzaga University, University of Wisconsin, and Seton Hall. These clinics give students exposure to poverty law and to the satisfaction of using their legal training to help those less fortunate than themselves. The poor in the local community benefit, of course, from the additional legal services. Just as important, as demonstrated by a recent study, 72 percent of student clinic participants say that the experience has increased their willingness to provide pro bono legal assistance later in their careers.

The supplemental field programs began as experiments to encourage private bar participation in delivering legal assistance to the poor. They have worked so well that the Corporation continues to fund them. The Volunteer Lawyers Project in Boston and the Pro Bono Referral Project in New Hampshire are excellent examples of programs we fund.

Apart from direct delivery of legal assistance, the Corporation also requests $19.5 million for support services.

For regional training centers, the Corporation requests $714,000.

The Corporation is also requesting $8,266,000 for national support centers in fiscal year 1992. Our sixteen national support centers specialize either in a particular poverty law issue—such as consumer law, or family law—or in the poverty-related problems of a particular group, such as the elderly or Native Americans.

The Corporation requests $8,968,000 to fund state support grants for training and litigation support at the state level, and $989,000 for the National Clearinghouse. The Clearinghouse is a research center that makes legal briefs and other documents available for legal services attorneys. The Clearinghouse also publishes a poverty law reporter.

In addition, the Corporation requests $584,000 for computer assisted legal research programs.

Finally, for Corporation management and grant administration, the Corporation requests $11,100,000. The funds in this category constitute 3 percent of the total budget request. This amount includes $10 million for management and administration, $1 million for Board initiatives, and $100,000 for a special contingency fund.

In requesting this amount, the Corporation assumes that the projected fiscal year 1991 uncommitted carryover of $1,500,000 will be allocated to the management and administration budget line.

Mr. Chairman, since today is my first formal appearance before your Committee, I would like to take a few moments to give my perspective on the present circumstances of the legal services community and my ambitions for its future.

For more than a decade, the legal services community has had more than its share of conflict and mistrust, often between the Corporation and the programs in the field. This fact has overshadowed our shared dedication to providing poor people with access to the most fundamental institution of our society: the system of justice. It has sometimes blinded both sides to the reality that every ounce of energy and resources we put into dispute is an ounce taken away from the people and principles we serve.

My first goal as President is to reestablish trust in the Corporation and credibility in the legal community. I can only succeed if communications between all parties are clear, direct and in good faith.

The budget request before you today is submitted in that spirit. It comes to you from a new Board of Directors and a new President of the Corporation—all of whom are dedicated to bringing a new era of cooperation and program strength to the Legal Services Corporation and its programs in the field.

I hope that by the end of my tenure as President, the discussion will no longer focus on how to make the Corporation and our programs credible, effective and efficient—but rather on how to use our credible, effective and efficient program to better meet the legal needs of America's poor.

Thank you again for your support in the past. I look forward to working with you as we rise to the challenges facing us now and in the future. This concludes my prepared remarks. I would be happy to answer any questions from the Committee.

STATEMENT OF SENATOR EDMUND S. MUSKIE

Senator Hollings, Senator Rudman and members of the subcommittee, my name is Edmund S. Muskie.

I appear before you today, not as a former colleague, but as chairman of the Maine Commission on Legal Needs and a spokesman for the New England Bar Foundation, an organization comprised of bar leaders in each of the six New England states, to urge this distinguished committee to substantially increase funding for the Legal Services Corporation, and to focus the increases on services to the poor. With me is Professor L. Kinvin Wroth, Chairman of the Commission's Steering Committee.

Last year, the Maine Commission on Legal Needs, a broad based citizen group, established by nine law related organizations, conducted a study of the relationship between poverty and access to justice in Maine. On May 1, 1990, the Maine Commission on Legal Needs issued a report. A copy of that report is attached to this testimony for your review.

After a telephone survey, hundreds of questionnaires, dozens of interviews and eight public hearings we found that relationship to be distressingly direct and simple. The public and private legal services available to the poor are wholly inadequate to meet the need. The needs of the poor for legal services are steadily increasing as funds to meet them remain static. There is one fact that troubles me, as a citizen of the United States and a former member of this body, more than any other. That fact is simply this—that the findings of the Maine study are not unique to my state. The desperate need for civil legal services that exists in Maine also exists in virtually every state and jurisdiction throughout the United States.

I would like to begin by providing you with a brief overview of the findings of our commission.

One, 19.5 percent of Maine's population falls below 125 percent of the federally established poverty level. This translates to approximately 85,000 households.

Two, we found Maine's poor experienced more than 80,000 legal problems in the study year (July, 1988–July, 1989).

Three, for 77 percent of the total problems experienced, no legal assistance of any kind was received.

Four, sixty-five percent of the total legal problems reported involved basic necessities, income maintenance, employment, health, utility problems, housing, and education.

Five, the instances of multiple problems among households reporting legal problems was significant.

Six, poor persons living in a city in which a legal services office is located were nearly twice as likely to obtain assistance and six more times as likely to have free legal services than those not living in such a location.

Seven, households headed by a single female parent reported significantly more problems than did either other households with children or other households without children.

Eight, there is one paid legal services lawyer for every 6,500 individuals living in poverty in Maine. By contrast, there is one lawyer for approximately every 400 individuals in the population as a whole.

In Maine, legal services are provided by the Volunteer Lawyers Project, Legal Services for the Elderly, the University of Maine Law School Clinic and the Single Statewide Legal Services Organization, Pine Tree Legal Assistance, Inc.

During the past decade, there have been significant changes in the sources and amounts of funding for legal services for the poor in Maine. Funding to support legal services for the elderly, to support voluntary representation by the private bar and to support law-student representation have increased. Funding for the Sole Legal Services Corporation Provider, Pine Tree, has decreased.

The major cutbacks in federal funding in the 1980's forced a retrenchment in services by Pine Tree Legal Assistance from which it has not recovered. Pine Tree's staff was reduced by 35 percent between 1980 and 1984. State assistance, IOLTA funds and small increases in federal funding improved staffing slightly from 1984–1988. However, the current staff levels remain 21 percent below 1980 levels.

Federal funding for PTLA decreased both in actual dollars (–4.3 percent) and constant dollars (–34 percent) from 1980–1988. During that time, the poverty population in Maine increased by approximately 7 percent.

The most basic conclusion of our study is that existing free legal services do not meet the demand. Even with the maximum commitment of the private bar to unpaid pro bono legal services, the total legal needs of the poor can only be met by major increases in the number of paid attorneys employed by statewide legal service providers and the addition of necessary supporting staff and facilities. In addition to the documented pro bono service through organized programs, the private bar provides service by its own initiative. The extent of that service is considerable, according to information obtained at the public hearings, yet it remains undocumented. In Maine, as elsewhere, the private bar has taken steps to respond to the need. More will be done.

The report contains a number of recommendations directed to the Congress, the Legal Services Corporation, the Organized Bar, the Governor, the State legislature, the courts, current legal service providers and the people of Maine which, if fully implemented, would substantially increase the resources available for the provision of legal services in Maine. But even with full implementation of all of the recommendations, the poor in Maine would still not have equal access to legal services.

While we recognize that the federal government, like state and local government, business and individual citizens, faces a difficult economic situation resulting in the need to carefully scrutinize new spending initiatives, we nevertheless urge you to consider appropriating a substantial increase in funding for the legal services program which now stands at a modest level of $327 million. In 1981, funding for legal services reached $321 million which met the "minimum access" goal of providing the equivalent of two legal services lawyers for every 10,000 poor people nationwide. The next year funding for legal services was cut by 25 percent and did not achieve its previous dollar level for another decade. In 1991 dollars, which accounts for inflation during the last ten years, it would take $744 million, or 228 percent of the current funding level, to provide the same legal services resources as were available in 1981.

The legal services community has requested an appropriation of $475 million for fiscal year 1992. This increased funding level would bring the program only one-third of the way back to the goal of minimum access. The American Bar Association has requested an appropriation of $425.6 million for fiscal year 1992. This amount would bring the program back only to the level reached in 1984, after the 25 percent reduction in funding, including an adjustment for the inflation that has eroded its resources since that year. It would restore only one-quarter of the amount needed to reach the minimum access goal that was achieved in 1981. Appropriation of either of these amounts would represent a modest, but significant commitment to the poor people of this nation and would be viewed by the states as a good faith effort by the federal government to meet us part way toward reaching the goal of equal access to the legal system for all of our nation's citizens that has proved to be so elusive for so long.

The Maine experience clearly illustrates the dimension of the problem found in every state. Similar studies in Massachusetts, Illinois, New York and Maryland, and the American Bar Association study, reached the same conclusions. Significant private funds have been dedicated to assessing the need, no further studies are needed, the time has come to direct meaningful funds to the problem. Increased public funds are absolutely necessary to close the gap and respond to the overwhelming unmet need for legal services. The major funding must come from the tax dollars which represent the public's commitment to our system of government.

The modest increase recommended by the Legal Services Corporation will not begin to address the problem. The experience of the poor in the pursuit of justice has been frustration, loss of dignity, and all too often denial. This causes implications for everyone in our society and threatens Americans' promise of "liberty and justice" for all. Assurances of equal access to justice appear to the poor to be meant for others. Understandably, their faith in our legal system has been shaken. The problem carries implications for all in our society. It concerns the most basic principles of our social and legal order.

I urge you to invest in justice for the poor—to support significant increases in funding for legal services to the nations poor. We may not be able to instantly achieve equal access to justice for all, but we will have taken an important step in that direction.

Thank you for giving me the opportunity to appear before you today. Professor Wroth and I would be happy to respond to any questions that the members of the subcommittee may have.

Report of

THE MAINE COMMISSION ON LEGAL NEEDS

An Action Plan for the 1990's

EXECUTIVE SUMMARY

May 1, 1990

Plan of the Report

The *Report of the Maine Commission on Legal Needs - 1990* consists of this *Executive Summary* and the full *Report.*

The *Executive Summary*, based on the full *Report*, contains a brief summary of the *Report*, together with the Findings and Recommendations of the Commission and the proposed Action Plan. The full *Report* contains a detailed analysis of the data gathered, which supports the Findings and Recommendations. The full *Report* also contains appendices, one of which describes the background and methodology of the Legal Needs Study and a bibliography.

Five thousand copies of the *Executive Summary* were printed as a separate document and distributed to the members of the Maine Legislature, to all persons registered to practice law in Maine and to the members of the Press. Limited copies of the *Executive Summary* are available on request from the Maine Bar Foundation, 124 State Street, Augusta, Maine, 04330. Four hundred copies of the full *Report* were printed and placed in the State Law Library at Augusta, the University of Maine Law Library at Portland, the county law libraries, major public libraries throughout the state, and the offices of the Maine Congressional Delegation. A limited number of copies of the full *Report* are available for purchase through the Bar Foundation.

The Maine Commission on Legal Needs

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Chairman's Preface

Over the past year The Maine Commission on Legal Needs has examined the relationship between poverty and access to justice in Maine. We have found that relationship to be distressingly direct and simple: the legal services that are available to the poor are wholly inadequate to meet the need.

The legal problems of the poor are many and fundamental. They have to do with basics: income, food, health, shelter. They occur frequently and are often interrelated. They defy attempts at self-help, because they involve laws, regulations and processes of overwhelming complexity.

To deal with these problems the poor need the assistance of those to whom our system of justice responds best: lawyers. They need legal assistance which is accessible, and which is free. Poverty-level incomes, by definition, are too small to provide adequate food, clothing and shelter. They cannot afford to pay for legal assistance.

Assurances of equal access to justice appear to the poor to be meant for others. Their experience in the pursuit of justice has been frustration, loss of dignity and all too often denial. Understandably, their faith in our legal system has been shaken. The problem carries implications for all in our society. It concerns the most basic principles of our social and legal order.

Existing free legal services are simply not meeting the demand. The supply of legal services attorneys, paralegals and support staff, and the distribution of legal services offices, leaves most of the poor with far too little access to the system and for many, none at all. The private bar has done a very commendable job of trying to fill this gap, but clearly needs to do more and must do all it can. However, an increased effort on the part of the private bar alone cannot do the job.

No single entity can solve the problem. There must be a coordinated effort between the public, the practitioners and the private sector. The broadly based Legal Needs Commission has completed its research, has made findings of fact, has developed recommendations, and presents an Action Plan to turn those recommendations into reality.

Our most basic recommendation is addressed to all members of society, as the beneficiaries of its universal, yet unrealized, guarantee of equal access to justice. It speaks to the absolute necessity of directing greatly increased funds to the provision of civil legal services for the poor. The major part of these funds must come from the tax dollars which represent the public commitment to our system of government and to the statement in Article I of the Maine Constitution, "[that all persons] shall have remedy by due course of law; and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay."

Edmund S. Muskie
Chairman

Findings and Recommendations

The Maine Commission on Legal Needs was established by the Maine Bar Foundation and a consortium of nine other organizations representing the public, private, and academic sectors of the legal system. The Commission's charge was to determine the extent to which the poor lack access to justice for their civil legal needs, to assess the existing sources of civil legal assistance for the poor, and to make recommendations for action to establish equal access to justice for all Maine citizens. To carry out this charge the Commission undertook the Maine Legal Needs Study. This *Report* presents the results.

The Maine Legal Needs Study had four components: (1) A scientifically designed and administered telephone survey of 521 low-income households in Maine. (2) A series of eight public hearings conducted at various locations throughout the state. (3) Various questionnaires mailed to legal and social service agencies and their staffs; lawyers, judges, and court personnel; and Maine State legislators and executive officers. (4) A series of personal interviews with social service agency personnel. The data and information derived from all of these sources, summarized in this *Executive Summary*, are analyzed in detail in the Commission's full Report. The background and methodology of the Legal Needs Study are described in detail in an Appendix to the full *Report.*

The Commission's findings, set forth in this *Executive Summary*, may be summed up as follows:

- **More than 230,000 people in Maine live in poverty.**
- **These individuals require access to the civil justice system in order to share fully in our society.**
- **The poor cannot afford to pay for the legal services essential to access to justice.**
- **The free civil legal services provided by public funding and the substantial voluntary efforts of the private bar are wholly inadequate to meet the needs of the poor.**

To address these needs, the Commission has prepared and offers to the people of Maine its Action Plan, with which this *Executive Summary* concludes. The Action Plan is designed to provide the ideas and resources that will assure equal access to civil justice for all Maine Citizens.

Poverty and Access to Justice

Poverty is a systemic condition in which lack of basic necessities creates a vicious circle. Those who must struggle for food, shelter, and health care are prevented from obtaining the education and training that lead to employment and income that can in turn provide adequate food, shelter, and health care. Poverty deprives individuals of the capacity to participate fully in our society and thus deprives society of the resource that the excluded individuals represent.

Fundamental to access to the responsibilities and rewards of society is access to justice. This basic promise of our social order is critical for the poor, because the vicious circle of poverty is enmeshed in a tangle of law and regulation which others rarely confront. The poor face their fellow citizens in eviction proceedings, utility shut-offs, repossessions of credit purchases, and suits on unpaid bills. They face their own family members in violent disputes and crises often engendered by the very conditions in which they live. And they face, always, "the System," the welfare agencies which disburse the income maintenance, housing, medical, and other benefits which society provides to alleviate the lot of the poor.

Though the poor have greater need for the counsel, representation, and advocacy that are the essence of access to justice, their share is far less than that allotted to the affluent. Since 1967, Pine Tree Legal Assistance, Inc., and other agencies funded by the federal and state governments have provided free civil legal services to the poor of Maine. (Representation in criminal cases is paid for by the state as a matter of Constitutional right.) Today there is one paid legal services lawyer for every 6,500 individuals living in poverty in Maine. By contrast, there is one lawyer for approximately every 400 individuals in the population as a whole. The extensive voluntary efforts of Maine lawyers who represent poor clients without fee "*pro bono publico*" (for the public good), though they lead the nation, do not begin to make up the difference.

Underlying the problem of equal access to justice are two far greater problems: (1) The root causes of poverty lie in the structure of American society where they reflect not only long-held social and psychological attitudes toward poverty, class, and race, but also the rapid political and technological changes of our times. (2) Our legal and administrative institutions are overburdened and ineffective in dealing with the concerns of all individuals in this increasingly complex society. The Commission has not proposed solutions to these larger problems. Rather, the Commission's goal is to increase the capacity of the poor under the present system to deal with the conditions of poverty and to develop the dignity, confidence, and skills to address its root causes.

The Legal Needs of the Poor

At least 230,000 (19.5%) of Maine's nearly 1.2 million people have incomes below 125% of the federally established poverty level. In 1989, this figure was $7,475 for an individual and $15,125 for a family of four. The 85,000 households that compose this poverty population experienced more than 80,000 legal problems between July 1988 and July 1989. This represents an average of approximately one problem per household. Most significant, however, are the instances of multiple problems: among the households which reported legal problems, the average was nearly three problems per household.

The poor have a substantially higher unemployment rate, a higher incidence of health problems, and lower educational levels than those above the poverty level. The poor often live in public housing and their housing, whether rented or owned, is more likely to be substandard. These conditions give rise to legal problems which have critical impact on the lives of the poor. About 65% of the total legal problems reported in the Legal Needs Study telephone survey of poverty households involved basic necessities: income maintenance and employment, health, utility problems, housing, and education. Another 13% of reported problems were family and domestic issues, and an additional 10% were consumer problems. The four areas in which problems arose with greatest frequency and were viewed as most serious were, in descending order, income maintenance, health, family, and utility problems.

FINDING: In the economic and social conditions which poverty imposes, the poor face civil legal problems which are significant in number, fundamental in nature, and burdensome in effect.

The Availability of Legal Assistance for the Poor

Data from the telephone survey and from the legal services providers indicate that Maine's poor obtained legal assistance for only 23% or slightly more than 18,000 of the more than 80,000 legal problems which they experienced from July 1988 to July 1989. Thus, over 61,000 legal problems (77%) went without legal assistance of any kind. Of the problems categorized as "most serious" in the telephone survey, only 27% received legal assistance. Moreover, in more than half of the cases where legal assistance was obtained, a fee was charge. Yet the poor cannot afford even the average rates charged by the private bar in Maine to paying clients.

FINDING: The amount of free legal assistance available to meet the needs of Maine's poor for help in managing and resolving their civil legal problems is wholly inadequate. The poor cannot afford to pay for legal help.

Meeting the Unmet Need: The Delivery of Legal Assistance

A. Level of Legal Services

Civil legal services for the poor in Maine are provided by publicly funded legal services agencies and by private lawyers who give their time voluntarily. Pine Tree Legal Assistance, Inc., is the statewide, base-line legal services provider, primarily funded by the federal Legal Services Corporation. Legal Services for the Elderly, Inc., funded by the federal and state governments, provides legal assistance to senior citizens, also statewide. The University of Maine Law School sponsors the Cumberland Legal Aid Clinic, in which students, with faculty supervision, represent clients primarily in southwestern Maine. The Volunteer Lawyers Project is a statewide *pro bono* referral panel of 1500 private attorneys who have each agreed to take up to three *pro bono* referrals per year. The Project, sponsored by the Maine Bar Foundation, leads the nation in the percentage of private lawyer participation. In addition, many private lawyers independently provide significant *pro bono* service.

Information provided by these four programs shows that together, they logged a total of 20,338 matters in 1988, providing brief service (one-time advice or referral) in 15,651 cases and extended representation (research, preparation of documents or negotiations) or litigation service (court or administrative proceedings) in 4,687 cases. A substantial proportion of the brief service cases would have received extended representation if resources had been available.

Each Pine Tree and Legal Services for the Elderly, Inc. lawyer handles an average of 100 extended representation or litigation cases per year. Volunteer Lawyers Project lawyers on average are assigned less than one extended representation or litigation matter per year. Volunteer Lawyers Project extended representation and litigation cases average about eight hours of lawyer time each. In the Clinic, each of 36 students handle approximately four extended representation or litigation civil cases per year. There is currently no means to document the independent *pro bono* contribution of private practitioners.

There are at present only 35 full-time equivalent lawyers employed to provide legal services for the poor in Maine. Salary levels for these lawyers and support staff are not competitive with other public sector jobs let alone with the private sector.

Projections from the telephone survey data show that in the year of the survey the poor had 61,000 legal problems for which they had no representation. Conservatively assuming that half of those cases would have required only brief service, there remain 30,500 cases for which extended representation or litigation service should have been provided. To meet even this conservatively stated unmet need would require a threefold increase in the present level of free legal services. There are presently 2,700 lawyers registered as active practitioners in Maine, and the Volunteer Lawyers Project handles 900 extended representation or litigation cases per year. If each private attorney accepted the *pro bono* referral of three extended representation or litigation cases per year, an additional 7,200 cases would be covered. If the Clinic were to double its caseload by adding 150 cases, 23,150 cases would remain to be covered by Pine Tree and Legal Services for the Elderly, Inc. This added caseload would require the equivalent of 232 additional salaried legal services lawyers.

If we assume that the remaining 30,500 cases could have been handled through brief service at a minimum of two hours each, the equivalent of 30 full-time paralegals would be required to provide this service. An increase of this magnitude in the number of lawyers and paralegals would obviously require significant expansion of support staff and investment in physical facilities and equipment.

FINDING: The poor experience at least 30,500 civil legal problems per year which require extended representation or litigation service that can be provided only by significant expansion of the capacity of existing legal services providers.

RECOMMENDATIONS:

(1) Increase the number of lawyers employed or retained by legal services providers in Maine and provide adequate paralegals, support staff, facilities, and equipment to support them.

(2) (a) Increase salaries, wages, and benefits for legal services attorneys, paralegals, and support staff to levels adequate to attract and retain qualified individuals. (b) Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay educational loans.

(3) (a) Encourage all lawyers licensed and registered for active practice in Maine to contribute a minimum of 25 hours of unpaid time per year to direct representation of the poor or volunteer work for organizations providing such representation, or to make an appropriate financial contribution to a legal services provider in lieu thereof. (b) Require all lawyers to report annually to the Board of Overseers of the Bar the hours spent or financial contribution made. (c) Provide appropriate recognition of such service or contribution.

(4) Increase the use of paralegals and other non-lawyers in providing legal services through the Volunteer Lawyers Project or other *pro bono* agency.

(5) Study ways of increasing the unpaid participation of the private bar in the provision of legal services, including (a) increased recognition for *pro bono* activity, (b) establishment of a requirement of a specific amount of unpaid *pro bono* representation, or an appropriately measured financial contribution in lieu thereof, and (c) establishment of a mentor program to encourage each lawyer to contribute 50 hours of unpaid representation of the poor during the first year of admission to the bar.

(6) Encourage law firms, corporate legal departments and government law agencies, to adopt express *pro bono* policies giving the same respect, the same credit for time spent and the same attorney and support resources to the provision of legal services to the poor, as are allotted to fee-generating matters or statutory responsibilities.

(7) Expand the scope of for-credit clinical programs and the number of students participating in them at the University of Maine Law School.

(8) Establish a public interest fellowship program to subsidize law student internships in civil legal services offices.

(9) **Increase the number of continuing legal education programs on poverty law issues and related trial skills and offer them at a reduced or no fee for legal services and *pro bono* attorneys.**

B. Systemic Change

Class actions have historically been an effective means for asserting and establishing the rights of large numbers of the poor opposing a single defendant or challenging a single legal doctrine or regulation. Such proceedings require major resources of time and money, as well as sophisticated lawyering skills. With their limited staffing Pine Tree and Legal Services for the Elderly, Inc. must forego use of the class action in situations in which it would be effective. Large law firms have the capacity to support such actions.

The very limited resources available to legal services providers have forced those agencies to devote their principal efforts to representation aimed at securing the basic necessities of existence for the poor, whether in court representation or legislative advocacy. There is currently no systematic effort to direct resources to bring about political and economic changes that would address the underlying causes and broad social effects of poverty.

FINDING: **Additional resources and skills are needed to permit greater use of the class action for vindicating the rights of the poor. There is no coordinated mechanism for seeking systemic change, whether through litigation or legislation, on behalf of the poor.**

RECOMMENDATIONS:

(1) Encourage private attorneys, including those in major law firms, to work with legal services providers as co-counsel in class actions and major law suits seeking systemic change.
(2) Increase the efforts of legal service providers and other organizations in the area of systemic change, including legislative advocacy to the extent permitted by funding agencies.

C. Litigation Costs

Often litigation on behalf of the poor involves significant outlays for expenses that may be recovered as costs if the plaintiff prevails. Private attorneys may be reluctant to make such outlays because of the small amount at stake.

FINDING: Lawyers would be encouraged to take complex and fee-generating cases for the poor if initial litigation expenses could be met.

RECOMMENDATION:

(1) Establish a revolving fund to cover costs and expenses, other than lawyers' fees, for poor clients in complex litigation.

D. Priorities

Among the four most frequently reported and most seriously regarded categories of problems identified in the telephone survey, free legal assistance was provided in only 15% of the income maintenance problems, 7.3% of the health problems, 15.4% of family problems, and 4% of utility problems. The caseloads of the legal service providers are in some areas out of line with the frequency and seriousness data from the survey. In particular, consumer (including utility), employment, and health cases occupy significantly less of the total provider caseload than their frequency and seriousness appear to warrant, and housing and individual rights cases, such as guardianships, occupy significantly more.

FINDING: The priorities of the legal service providers may not be fully in accord with the actual or perceived legal needs of potential clients.

RECOMMENDATIONS:

(1) Request that legal services providers assess areas of common concern in order to maximize the use of public funds and develop a coordinated approach to the delivery of legal services.

(2) Develop a system of court-appointed counsel in certain civil cases, including landlord/tenant cases, domestic and family law matters, and defense of collection and other civil actions.

Meeting the Unmet Need: Access to Legal Assistance

A. The Problem of Location

Poor people living in a city in which a legal service office is located were nearly two times more likely to obtain legal assistance, and six times more likely to have obtained free legal service, than those not living in such a location. Residents of these cities were also twice as likely to be aware of the availability of free legal services.

Data gathered for the Legal Needs Study demonstrate that this proximity to a legal service office is the only "location" factor of significance. Other place-of-residence factors, such as residence in the northern or southern part of the state, residence in an urban or rural area, and population center size do not signficantly affect the volume of legal problems experienced, the receipt of legal assistance, the receipt of free legal assistance or awareness of free legal services.

FINDING: Poor people living outside cities where legal services offices are located are substantially less likely to obtain legal assistance than those living within such cities.

RECOMMENDATIONS:

(1) Increase the number of locations where legal services are available to the poor and improve the distribution of legal services offices in the state.
(2) Develop a system of contracting with members of the private bar to provide free or reduced fee legal services in those areas not adequately served by legal services offices or voluntary programs.

B. The Problem of Referral

Many of the poor, and social service providers as well, report being shunted from one legal services provider to another, because of either financial eligibility problems or case priorities. In particular, with regard to the Volunteer Lawyers Project, there was universal expression of concern at the difficulty of reaching the Project's central referral office by telephone. Although 1,500 private attorneys have agreed to take up to three *pro bono* cases per year as members of the Project's statewide panel, fewer than 900 cases were referred in 1988. The Project is thus operating at about 20% of capacity.

FINDING: The present decentralized referral system of legal services providers creates confusion and may result in some individuals being unable to obtain services. The intake system for the Volunteer Lawyers Project prevents the present capacity of the Project from being fully utilized and will be totally inadequate if the capacity is increased.

RECOMMENDATIONS:

(1) Insure a coordinated statewide intake and referral system linking all legal service providers in the state.
(2) Increase the capacity of the Volunteer Lawyers Project, or develop a new mechanism, to utilize effectively the substantial commitment of the private bar to deliver *pro bono* legal services.

C. Expanded Use of Paraprofessional Assistance

Many problems for which the poor seek legal assistance do not necessarily require the services of a lawyer. For example, in a court house a trained lay assistant could explain procedures and assist individuals in *pro se* representation in small claims matters or other relatively uncomplicated proceedings. Trained assistants in the offices of governmental agencies which deal with the poor could provide guidance through the regulatory maze surrounding most benefit programs. Paralegals could be trained to provide court representation in small claims and other less complex matters and could give advice and draft papers in many situations, provided that the boundaries of the unauthorized practice of law were made clear.

FINDING: Paralegals and other nonlawyers are not sufficiently used to provide legal assistance in situations where either a lawyer is unavailable or a lawyer's services are not required or are not economically feasible.

RECOMMENDATIONS:

(1) Develop a system of non-lawyer legal assistants based in court houses and relevant governmental offices to guide people who need help in dealing with forms and procedure.

(2) Develop licensure guidelines to permit the supervised practice of law by legal paraprofessionals, including client counseling and court representation in routine legal matters or particular types of cases.

D. Barriers to Access

In some areas of the state, where French is the primary language for many individuals, language may be a barrier to obtaining legal services if sufficient bilingual staff are not employed. Asian languages present even more difficult interpretation problems. Similarly, interpretation may be necessary for hearing-impaired individuals. People with other handicaps and disabilities represent a special problem. Poor households in Maine with a disabled member experience more legal problems than do households without a disabled member and receive more legal assistance. Provisions to assure access for these individuals range from making sure that all legal services offices are accessible for handicapped persons to providing special transportation for disabled clients or making it possible for legal services personnel to make "house calls." Social services agencies and volunteer organizations can assist in overcoming these barriers.

FINDING: Poor people who do not speak English or are hearing impaired or otherwise handicapped have special problems of access to legal assistance.

RECOMMENDATION:

(1) Improve access to legal assistance for persons with language, hearing, and other disabilities, enlisting help from social service agencies and volunteer organizations.

E. Legal Assistance for the Near Poor

Testimony at the public hearings indicated that there are numerous individuals whose economic status renders them ineligible for free legal assistance from Pine Tree and the Volunteer Lawyers Project. Legal Services Corporation regulations, as well as scarce resources, require these agencies to enforce income limitations on the delivery of their services. Even though Legal Services for the Elderly, Inc. has no income limitations, its services, limited to age-eligible individuals, are concentrated on the elderly poor. Poor clients referred to private lawyers by the Maine State Bar Association's Lawyers Referral Service must, like all others, pay a $15.00 referral fee and a full fee after the initial consultation; the near-poor cannot afford to do so. There is no system of graduated fees based on income, and establishment of such a system might present problems under present rules of professional responsibility and antitrust regulations. Many individuals who are income-ineligible thus may be less able to obtain legal assistance than those who meet eligibility standards.

FINDING: There is no satisfactory provision of legal services for the near poor and others who are ineligible for free legal services but who cannot afford to pay the full fees for private legal assistance.

RECOMMENDATION:

(1) Develop ways to meet the legal needs of individuals not eligible for free legal services, such as sliding fee scales.

The Problem of Awareness: The Poor, the Professions, the Public

A. The Poor

Less than one-third of the respondents to the telephone survey were aware of the availability of free legal services in Maine. It was also clear from information gathered for the Study that the legal problems of the poor and their need for legal assistance were directly related to their lack of information and knowledge about legal rights and responsibilities and about the way our system of law and justice works. In addition to the legal problems that such lack of knowledge may create or exacerbate, it also brings a sense of confusion, of powerlessness and of frustration, undermining confidence and the motivation to try to resolve problems, whether independently or with assistance. The ultimate result is to destroy faith in the underlying fairness of our system.

FINDING: The poor need better information about the legal assistance available to them. They also need a better understanding of their rights and responsibilities, of our system of law and justice, and of the means of dealing with that system.

RECOMMENDATION:

(1) Design and initiate a comprehensive statewide educational program to provide for the poor and other vulnerable persons a better understanding of their rights and their responsibilities, of the way our system of law and justice works, of the skills for dealing with that system, and of the legal assistance available to them.

B. The Professions and the Public

Many of those in the legal system have little knowledge of or sensitivity to the conditions of poverty. There is no program of continuing legal or judicial education which endeavors to fill these crucial gaps of knowledge and experience. Similarly, providers of social services to the poor often do not recognize problems as legal and are often unaware of sources of legal assistance. Again, no program of relevant professional education exists. Legal services providers, who logically might best provide this training to their professional and social services colleagues, do not have the human or financial resources to do so on a comprehensive statewide basis. Finally, there is a lack of understanding in the public at large of the fundamental rights and responsibilities which underlie our legal and political system, a lack of understanding of how that system works, and a failure to realize the need for adequate legal assistance for the poor.

FINDING: Many lawyers, judges, court personnel, other public officials, social service providers, law students and others with whom the poor deal have inadequate knowledge and understanding of the conditions of the lives of the poor, their social as well as legal problems, and their needs. The public at large lacks understanding of the functions of law and the legal system in our society, particularly as they affect the poor.

RECOMMENDATIONS:

(1) Design and initiate educational programs that will provide lawyers, judges, court personnel, other public officials, law students, and others with whom the poor deal with adequate knowledge and understanding of the conditions of their lives, their problems, and their needs.

(2) Design and initiate educational programs that will assist social services providers to recognize legal problems and make them aware of available legal assistance and the means of obtaining it.

(3) Encourage and strengthen the legal education component of public education at all levels statewide, including adult education both within and outside the educational system, and develop a comprehensive program to raise public awareness of the need for adequate civil legal services for the poor.

Funding for Legal Services

A. Funding Needs and Sources

Many of the recommendations of the Commission require significant additional funding. While some recommendations call primarily for increased volunteer commitment and for coordination among agencies and institutions, others involve substantial additions of personnel and support. The most basic conclusion of the Study is that even with the maximum commitment of the private bar to unpaid *pro bono* legal representation of the poor, the total legal needs of the poor can only be met by major increases in the number of paid attorneys employed by statewide legal services providers and the addition of necessary supporting staff and facilities.

While no total cost to meet these needs has been calculated, the magnitude may be judged from the fact that the present annual operating cost of a typical legal services office staffed by three lawyers, one paralegal and two secretaries is about $200,000, using as the salary component of this cost 1988 competitive starting salary rates of $25,000 for lawyers, $16,000 for paralegals and $14,000 for legal secretaries. In discussion of Finding 4A, it was suggested that, even with the bar providing *pro bono* service, the equivalent of 232 salaried legal services lawyers would be necessary to meet Maine's present unmet legal need. At entry level salary costs, the annual cost for these additional lawyers would be about $5,800,000. Staff, fringe benefits, equipment, office expense, and space to support these lawyers would amount to at least an additional $6,000,000 annually. Thus, a funding increase of nearly $12,000,000 per year would be required to meet the full need.

Between 1980 and 1988, the total funding for legal services in Maine, expressed in constant 1988 dollars, increased by 7% from $2,512,423 to $2,689,215, thanks primarily to state legislative appropriations and the Maine Bar Foundation's Interest on Lawyer's Trust Accounts (IOLTA) Program. This increase is illusory, however. During this same period, the low-income population of the state increased by 7%. Moreover, with an eight-year increase in inflation of nearly 44%, Pine Tree, the largest single provider, experienced a 17% budget decrease in 1988 dollars from $2,119,454 to $1,760,430. Pine Tree's federal funding from the Legal Services Corporation decreased in actual dollar amounts, not adjusted for inflation, by 4.3% from $1,404,274 to $1,342,515. Additional funds during the years 1980-1988 for Legal Services for the Elderly and the Volunteer Lawyers Project have made a major contribution to meeting the legal needs of Maine's poor. Nevertheless, Pine Tree is the statewide, full-service provider of legal services, handling 55% of the total caseload of the four principal providers, 38% of their extended representation/litigation caseload, and 56% of the litigated cases. Secure funding for Pine Tree's work is essential.

In 1988, there were four basic funding sources for civil legal services for the poor in Maine.

Source		Amount
1. **Federal Funds**		
Legal Services Corporation	$1,498,446	
Other (Older Americans Act, Law School grants)	210,379	
TOTAL	$1,708,825	$1,708,825
2. **State Funds**		
Direct legislative appropriation	90,000	
Other (grants, contracts, University funds)	485,624	
TOTAL	$575,624	575,624
3. IOLTA - Maine Bar Foundation		
TOTAL		202,447
4. **Private Contributions**		
Board of Overseers checkoff	19,953	
United Way	45,377	
Other (est. LSE space, donations)	40,000	
TOTAL	105,330	105,330
GRAND TOTAL		$2,592,226

(An additional $96,989 was primarily attorneys' fees and interest.)

New funding for legal services must be obtained from these four major sources. Primary responsibility must continue to rest with federal and state government, because, above all, we must recognize that meeting the needs of the poor for civil legal services is a public responsibility. Nevertheless, significant additional resources may be realized from the other two funding sources. The Maine Bar Foundation presently administers a voluntary IOLTA program and a voluntary Board of Overseers dues checkoff program. A comprehensive IOLTA program and a negative dues checkoff system would significantly increase funds from those sources. The Maine Bar Foundation could then reexamine its funding priorities to make sure that it is directing the maximum possible resources to provision of legal services to the poor. Finally, the philanthropic community in Maine has barely been reached through individual fundraising efforts of Pine Tree, Legal Services for the Elderly, and the Law School. A concerted development effort among all providers, led by the Bar Foundation, could.also be a significant additional source of funds.

FINDING: There is inadequate funding to maintain even a minimum level of legal services to the poor in Maine. Substantial new resources must be directed to the support of legal services, with the burden of those resources equitably apportioned between federal and state government and the private sector.

RECOMMENDATIONS:

(1) Through the Maine Congressional delegation and the President of the United States, seek to increase substantially federal appropriations for programs providing legal services to the poor.
(2) Increase the annual state legislative appropriations for publicly funded legal services providers.
(3) Establish a negative dues check-off on the Board of Overseers of the Bar's annual attorney registration statement with the proceeds to be applied to the provision of civil legal services for the poor.
(4) Establish a coordinated approach to soliciting the Maine philanthropic community for the support of legal services to the poor.
(5) Convert the voluntary IOLTA program to a comprehensive program.
(6) Reallocate resources of the Maine Bar Foundation to provide more support for direct legal services to the poor.

Implementation of the Legal Needs Study

A. Implementation Mechanism

If Maine's response to the legal needs of the poor is to be significantly improved, the recommendations contained in this report must be implemented as soon as possible. The Maine Bar Foundation has substantial facilities, resources, staff and volunteer capacity, as well as a mission to support legal services for the poor. Therefore, the Maine Bar Foundation would be an appropriate body to carry forward the implementation effort. Each agency with responsibility for some aspect of the process for meeting the legal needs of the poor must be involved in the planning and execution of the Study's recommendations and must be prepared to carry out its own responsibilities.

FINDING: If the Report of the Maine Commission on Legal Needs is to have significant effects, a body must be established to oversee its implementation in accordance with a detailed action plan.

RECOMMENDATIONS:

(1) The Maine Bar Foundation should assume responsibility for continuing oversight and implementation of the Commission's recommendations, including support for increased public funding and should assure a

broad participation in this effort by the agencies and interests composing the Commission.

(2) The various involved governmental and bar agencies should carry out the implementation responsibilities as described in the Action Plan. The Maine Bar Foundation should solicit annual reports on the implementation process from action agencies as appropriate.

Action Plan

On the basis of the Maine Legal Needs Study, Findings and Recommendations which are the result of the Study, the Commission's Action Plan identifies specific steps to be taken to bring about change. The assignment of specific steps to particular agencies and organizations reflects the Commission's view as to where principal responsibilities lie. Many steps clearly require cooperative efforts. A systematic, coordinated approach must link all of the organizations and their specific responsibilities.

It is the Commission's goal to have the Action Plan fully implemented by May 1, 1995.

Action by the President, U.S. Congress and Legal Services Corporation

- Increase substantially federal appropriations for such purposes as:

  Increasing the number of lawyers and staff in the legal service agencies serving the poor in Maine.

  Increasing the number and distribution of legal service offices in Maine.

  Creating an opportunity for the legal service providers to contract with private attorneys to provide free or reduced fee legal services in those areas which cannot be adequately served by the legal service offices or the Volunteer Lawyers Project.

- Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay federal educational loans.
- Encourage all government law agencies to adopt an express policy, to be communicated on at least an annual basis to all lawyers, encouraging government lawyers to provide *pro bono* legal services.

Action by the Governor and the Maine State Legislature

- Increase substantially the annual state legislative appropriations for publicly funded legal services providers for such purposes as:

Increasing the number of lawyers and staff in the legal service offices serving the poor.

Increasing the number of locations where free legal services are available to the poor.

- In cooperation with the Supreme Judicial Court develop legislation to create a system of court appointed counsel in certain civil cases.
- Encourage all government law agencies to adopt an express policy, to be communicated on at least an annual basis to all lawyers, encouraging government lawyers to provide *pro bono* legal services.
- Develop legislation to create a system of non-lawyer legal assistants based in courthouses and relevant governmental offices to guide people who need assistance in dealing with forms and procedure.
- Establish a revolving fund to cover costs and expenses, other than lawyers' fees, for poor clients in complex litigation.
- Establish a public interest fellowship program to subsidize law student internships in legal services offices.
- Establish a loan forgiveness fund to enable law school graduates who undertake civil legal work for the poor in the public sector to repay private and state guaranteed educational loans.

Action by the Maine Supreme Judicial Court

- Require all lawyers to report annually to the Board of Overseers of the Bar their unpaid professional service devoted to direct representation of the poor or volunteer work for organizations providing such representation, or financial contributions made in lieu of such services to a legal services provider serving the poor.
- In cooperation with the Legislature develop legislation to create a system of court appointed counsel in certain civil cases.
- Develop guidelines for licensure to permit supervised practice of law by legal paraprofessionals, including client counseling and representation in court in routine legal matters or particular types of cases.
- Convert the voluntary IOLTA program to a comprehensive program.
- Establish a negative dues check-off on the annual attorney registration statement with the proceeds to be applied to the provision of civil legal services to the poor.

Action by Legal Service Provider Programs

- Seek funds to increase the number of locations where legal services are available to the poor and improve their distribution in the State.
- Seek funds to increase the number of lawyers employed or retained by legal services providers in Maine and to provide adequate paralegals, support staff, facilities, and equipment to support them.

- In conjunction with the Maine Bar Foundation, develop a system of contracting for legal services with members of the private bar to provide free or reduced-fee legal services in those areas which cannot be adequately served by the legal services offices or the Volunteer Lawyers Project.
- Develop a system of non-lawyer legal assistants based in courthouses and relevant governmental offices to guide people who need assistance in dealing with forms and procedure.
- Improve access to appropriate legal services personnel for persons with hearing and language barriers and other disabilities, enlisting the help of appropriate social service agencies and volunteer organizations.
- Seek funds to increase salaries, wages, and benefits for legal services attorneys, paralegals and support staff to levels adequate to attract and retain qualified individuals.
- Coordinate and increase the efforts of legal service providers and other organizations in the area of systemic change, including legislative advocacy as permitted by funding agencies.
- Assess areas of common concern to all legal service providers in order to maximize the use of public funds, developing a coordinated approach to the delivery of legal services.
- In cooperation with the Maine Bar Foundation, insure a statewide coordinated intake and referral system linking all legal service providers in the state.

Action by the Private Bar

- Encourage all lawyers licensed and registered for active practice in Maine to contribute a minimum of 25 hours per year of unpaid professional service to direct representation of the poor or to volunteer work for organizations providing such representation or, in lieu of such service, to make an appropriate financial contribution to a legal services agency providing civil legal services to the poor.
- Study ways of increasing the *pro bono* participation of the private bar in the provision of legal services to the poor, including (a) increased recognition of *pro bono* work and (b) the establishment of a requirement of a specific amount of *pro bono* representation or an appropriately measured financial contribution in lieu thereof, (c) establishment of a mentor program to encourage each lawyer to contribute 50 hours of *pro bono* representation of the poor during the first year of admission to the bar, with certification at the end of the year.
- Increase the number of continuing legal education programs on poverty law issues and offer them at a reduced or no fee for legal services and *pro bono* attorneys.
- Encourage private attorneys, including those in major law firms, to work with legal services providers as co-counsel in class actions and major law suits seeking systemic change.

- Develop ways of meeting the legal needs of individuals not eligible for free legal services, such as sliding fee scales.
- Encourage law firms, corporate legal departments and government law agencies, to adopt express *pro bono* policies giving the same respect, the same credit for time spent, the same attorney and support resources to the provision of legal services for the poor, as are allotted to fee-generating matters or statutory responsibilities.

Action by Maine Bar Foundation

- Assume responsibility for continuing oversight and implementation of the Commission's recommendations, including support for increased public funding for legal services, and assure a broad participation in such efforts by the agencies composing the Commission.
- Increase the use of paralegals and other non-lawyers in providing legal services through the Volunteer Lawyers Project or another *pro bono* agency.
- Increase the capacity of the Volunteer Lawyers Project, or develop a new mechanism, to utilize effectively the commitment of the private bar to *pro bono* legal services.
- Establish a coordinated approach to soliciting the Maine philanthropic community for the support of legal services to the poor.
- Prepare a proposal to convert the voluntary IOLTA program to a comprehensive program.
- In cooperation with the legal service providers insure a statewide coordinated intake and referral system linking all legal service providers in the state.
- In conjunction with the legal service providers, develop a system of contracting for legal services with members of the private bar to provide free or reduced fee legal services in those areas which cannot be adequately served by legal services offices or the Volunteer Lawyers Project.
- Reallocate resources of the Maine Bar Foundation to provide more support for direct legal services to the poor.

Action by the University of Maine School of Law

- Expand the scope of for-credit clinical programs and the number of students participating in them at the University of Maine Law School.
- Design and initiate a comprehensive statewide educational program to enable the poor and other vulnerable persons to gain a better understanding of their rights and their responsibilities, of the way our system of law and justice works, of the skills for dealing with that system, and of the legal assistance available to them.
- Design and initiate educational programs that will train social services providers to recognize legal problems and make them aware of available legal assistance and the means of obtaining it.
- Design and initiate educational programs to enable law students, lawyers, judges and others with whom the poor deal to gain adequate knowledge

and understanding of the problems, and needs of the poor and of the conditions which characterize their lives.

- Encourage and strengthen the legal education component of public education at all levels statewide, including adult education both within and outside the educational system, and develop a comprehensive program to raise the awareness of the public regarding the need for adequate civil legal services for the poor.

Acknowledgements

The work of the Commission was supported by generous contributions from the following organizations, law firms and individuals:

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The leadership, guidance and deep personal commitment of Senator Muskie throughout the research process and development of the final report has been an inspiration.

The energy, dedication and skills of Linda A. Weston in transforming endless drafts from a variety of volunteers into a final document has been one of the valuable components of this report.

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Finally, the meticulous scrutiny of the manuscript and assistance from Kay R. H. Evans put life in the statistics and substance of this report.

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BUDGET CHARADE

Senator **HOLLINGS**. I would love to hear more. I tell you, you make me feel good.

Excuse me, Ms. Taylor. In a moment, we want to hear from you, but Ed, what you have given us in miniature is a State of the Union relative not just to one subject, but the fiscal state of affairs in this country. We serve on all of these subcommittees and must also find money for feeding programs, housing, health care, education, and right on down the list.

It has just been a grand charade. I mean, we put a different State of the Union out there, that the budget is under control, the deficit is being reduced $500 billion over 5 years. Well, over on page 7, tucked underneath, we see we have increased the debt limit from $3.1 to $4.1 trillion. So, we are going to expand $1 trillion more.

You and I could have caught it in the early eighties maybe with the freeze. Howard Baker tried to help me, and after 5 years, we got together with Senators Rudman and Gramm, and used a cut across the board. But, then the 1988 race came up and then they began lying about the growth and the minimum time of interest costs.

Now we have got what they call the summit agreement, which says in order to take care of legal services, you have got to take from one of these others, which actually is a fraudulent deal. I opposed it, tried to expose it, and now we have heard an eloquent statement from you. Here now, we finally have what Senator Rudman and I want—a credible group who is willing to work hard, and I can tell you all have the feel for it.

Dean, I have traveled up through Maine, and you can see the poverty in those places. You can see it in my own backyard. So, we have got a lot of unmet needs.

But, if we can't get some kind of consumption tax, we'll never be able to meet these needs. In Europe, the VAT is 16 percent; over in the Pacific, Korea, it is 25 percent. If we can get just 5 percent here, we can get down those interest costs, get the economy moving again, and then get the money to get the deficit down and spend this $32 billion on worthwhile programs. We have got a $3.2 trillion debt. The interest cost is $32 billion. I can spend that $32 billion on legal services, on education, housing, health care, food, all these other things. Right now, I am spending it, but getting nothing in return. This is the stupidest operation I have ever witnessed. We are spending it for absolutely nothing except getting people reelected. Read my lips. Thank you.

Ms. Taylor? [Laughter.]

Senator **MUSKIE**. That is something, Senator.

STATEMENT OF KIM TAYLOR

Ms. **TAYLOR**. Thank you, Mr. Chairman, Senator Rudman. My name is Kim Taylor, and I am the director of the Public Defenders Office of the District of Columbia. I am also a member of the American Bar Association's Standing Committee on Legal Aid and Indigent Families.

I am here today at the request of the president of the association, John J. Curtin, Jr., to express the views of the association on funding for the Legal Services Corporation.

The support of the American Bar Association for a vigorous legal services program is, I believe, well known. The breadth and depth of that support was clearly reflected in a survey our association conducted last fall of about 500 leaders of the organized bar around the country, in which we invited their input on the issues which have been made ABA legislative priorities in the 102d Congress. The No. 1 issue among the respondents was support for a well-financed, comprehensive program of legal services for the poor.

The necessity for a vigorous Legal Services Corporation has become even more apparent in recent months:

At a time when the census is expected to have documented at least a 10-percent rise in the number of poor people in this country, the Legal Services Corporation will need to be there.

As you noted, Mr. Chairman, at a time when the war in the gulf has removed the principal breadwinner in many households, the Legal Services Corporation will need to be there.

At a time when the pressures of the recession are creating even larger numbers of poor people, the Legal Services Corporation will need to be there.

We believe that it is vitally important that there be a dramatic and significant increase in resources for the Legal Services Corporation. We, therefore, recommend that Congress appropriate $425.6 million for the Legal Services Corporation for fiscal year 1992. If we look at the legal services program over the last decade, we see a stark image, the image of the slow starvation of a program that is, in many ways, the lifeline for poor people in this country. For fiscal year 1981, Congress appropriated $321 million for the Legal Services Corporation. To have simply kept pace with inflation since that time, a current appropriation of over $500 million would be required. Yet the current appropriation is $327 million, only 65 percent of the fiscal year 1981 level adjusted for inflation.

The record is even worse if we compare the current funding level with the short-term goal of the original LSC Board appointed by President Ford in 1975. Their hope was that by 1980, the Corporation's funding would have risen to a level sufficient to provide minimum access to justice, the equivalent of 2 attorneys for every 10,000 poor persons. That objective, they knew, would still be far short of meeting any substantial percentage of the legal needs of the poor, but in their view, it was a sensible, short-range objective.

To achieve minimum access today would require an appropriation of $744 million, or 228 percent of the current funding level. By all indicators and studies, it is eminently clear that only a minute fraction of the poor are receiving needed legal representation.

While minimum access has been set as a goal, an ABA study of legal needs of the general public in the mid-1970's demonstrated that even if minimum access was achieved, only 20 percent of the legal needs of poor people would be met.

Several States have conducted detailed surveys in recent years of the legal needs of the poor in those States, including Maryland, Massachusetts, New York, Illinois, and Maine. The level of unmet need identified in these studies ranged from a low of 77 percent in

Maine, as you have heard, to a high of 86 percent in New York. In New York, this translates to nearly 3 million civil legal services annually. An Ohio study will be released later this month, and will show, we understand, an 83-percent unmet need.

A recent pilot national civil legal needs survey of low-income people conducted by the American Bar Association showed there were 4.9 million civil problems of the poor in 1987, for which there was legal assistance, and 19 million for which there was no legal assistance—again, an 80-percent unmet need.

IOLTA, or interest on lawyer trust account, programs that have stepped up efforts to encourage greater pro bono contributions of services by lawyers have been extraordinarily helpful. IOLTA programs, for example, provided $60 million for civil legal services for the poor in 1989, and that figure will likely be in the $100 million range this year. Formal bar-sponsored pro bono programs have increased in number and scope to the point that 136,000 attorneys are now enrolled in them. But these increases in resources have been a saving grace, not a panacea. They have gone almost exclusively to filling the gap created by the falloff in Federal funding during the eighties. Consequently, they have not resulted in a net increase in legal services to the poor. Rather, they have helped to keep the level of unmet need from becoming even greater.

Apart from the continuing problem of unmet legal need, there has been a very serious infrastructure problem created by the decline in Federal resources. The salaries paid to legal services attorneys are the lowest in the profession. This is hardly news—they have been the lowest since the inception of the program. But over the past decade, there has been little, if any, upward movement in legal services salaries. They have been virtually frozen at a very low level, and inflation has eroded them severely.

Additionally, the cost of legal education has not been frozen. To the contrary, it has risen dramatically. Law school tuition in the eighties rose 171.6 percent for the private schools and 182.6 percent for public schools, or roughly 11 percent each year. Salaries for starting attorneys in major metropolitan areas, on the other hand, still hover in the low $20's; the pay scales for most programs top out in the $35,000 to $40,000 range.

As a recent Chicago Tribune article on the problem commented, and I quote, "Whereas it was once inconvenient to take legal services jobs, it has for many now become impossible. Despite a glut of attorneys in the job market, recruiters for legal services say positions are still sometimes going unfilled for months."

Thus, even the most altruistic law students and young lawyers saddled with large indebtedness are no longer able to make such a sacrifice. Yet the need for their services becomes greater and greater. In the past year, with the softening of the economy, the unemployment level rose from 5.3 percent to 6.1 percent. That is a 15-percent increase in 1 year or over 1 million jobs lost.

Additionally, State and local governments across the Nation are facing their worst financial situation in decades. Perhaps inevitably, they are making heavy cuts in benefit and social welfare programs, further exacerbating the problems of our client community.

Our recommendation to you for fiscal year 1992 is based not upon a return next year to minimum access, though we believe that would be fully justified; nor do we recommend that you fully adjust for effects of inflation on the program's budget since fiscal year 1981.

All we ask is that you adjust for inflation since fiscal year 1984, when Congress partially restored the cuts made in fiscal year 1982 and brought the funding level to $305 million.

Last year, we recommended $401.1 million to you. In the intervening year, there has been a 6.1-percent increase in the Consumer Price Index, bringing the total to $425.6 million. While this represents a significant percentage increase over the current level, it would amount to only five-hundredths of 1 percent of the domestic discretionary budget.

We understand and appreciate the tremendous financial constraints under which the Federal Government and this subcommittee must operate. But we also believe that there is a compelling case for significantly increasing the funding of this program, and that a modest further investment of funding will return significant benefits to all of us.

PREPARED STATEMENT

Learned Hand proclaimed decades ago, "Thou shall not ration justice." I fear that in the past decade, we have done precisely that. It is time to take a dramatic step toward restoring the balance of the scales of justice. Thank you.

[The statement follows:]

STATEMENT OF KIM TAYLOR

Mr. Chairman and Members of the Subcommittee: I am Kim Taylor, the Public Defender for the District of Columbia and a member of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

I appear today at the request of the President of the Association, John J. Curtin, Jr., to express the views of the Association on funding for the Legal Services Corporation.

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The necessity for a vigorous Legal Services Corporation has become even more apparent in recent months: at a time when the Census is expected to have documented at least a 10 percent rise in the number of poor people in this country, LSC will need to be there; at a time when the War in the Gulf has removed the principal breadwinner in many households, LSC will need to be there; at a time when the pressures of the recession are creating even larger numbers of poor people, LSC will need to be there.

We believe it is vitally important that there be a dramatic and significant increase in resources for the LSC. We recommend that Congress appropriate $425.6 million for LSC for fiscal year 1991.

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The record is even worse if we compare the current funding level with the "short-term" goal of the original LSC Board appointed by President Ford in 1975. Their hope was that by 1980 the Corporation's funding would have risen to a level sufficient to provide "minimum access to justice"—the equivalent of two attorneys for every 10,000 poor persons. That objective, they knew, would still be far short of meeting any substantial percentage of the legal needs of the poor, but in their view it was a sensible short-range objective.

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Apart from the continuing problem of unmet legal need, there has been a very serious "infrastructure" problem created by the decline in federal resources. The salaries paid to legal services attorneys are the lowest in the profession. That is hardly news—they have been the lowest since the inception of the program. But over the past decade there has been little, if any, upward movement in legal services salaries; they have been virtually frozen at a very low level, and inflation has eroded them severely.

Additionally, the cost of legal education has not been frozen; to the contrary, it has risen dramatically. Law school tuition in the 1980's rose 171.6 percent for private schools and 182.6 percent for public schools, or roughly 11 percent each year. Salaries for starting attorneys in major metropolitan areas, on the other hand, still hover in the low $20's; the pay scales for most programs top out in the $35,000 to $40,000 range. As a recent Chicago Tribune article on the problem commented, "Whereas it was once inconvenient to take legal services jobs, it has, for many, now become impossible. * * * Despite a glut of attorneys in the job market, recruiters for legal services say positions are still sometimes going unfilled for months."

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We understand and appreciate the tremendous financial constraints under which the federal government, and this subcommittee, must operate. But we also believe there is a compelling case for significantly increasing the funding of this program, and that a modest further investment of funding will return significant benefits to all of us.

Learned Hand proclaimed decades ago, "Thou shall not ration justice." I fear that in the past decade we have done precisely that. It is time to take a dramatic step toward restoring the balance of the scales of justice.

CONFIRMATION OF BOARD MEMBERS

Senator HOLLINGS. We have not heard about the nominees that the White House submitted to the American Bar Association. Is the American Bar Association going to make recommendations with respect to the specific nominees?

Ms. TAYLOR. Yes, sir; we are going to apply the standards which were set out by the American Bar Association in evaluating the persons who have been nominated, and, in fact, I have a letter which was addressed to Senator Kennedy from President Curtin which outlines the criteria the American Bar Association hopes to use.

Senator HOLLINGS. How quickly are we going to have those nominees up there?

Ms. TAYLOR. I am not sure of the timetable. I might defer to Mr. Evans on that. He might give us some assistance.

Mr. EVANS. The nominations have gone up. There has been no date yet scheduled for a hearing. The understanding I have is that the committee is preparing a questionnaire to send to the nominees and once that has gone out, it will then figure out the timetable.

I expect it probably will not be until late April or May when the actual hearings will be held, but the Corporation will supply other information on that.

Senator RUDMAN. I think that is right.

Senator HOLLINGS. Senator Rudman.

TIMEKEEPING REGULATION

Senator RUDMAN. Well, I just have a few questions. I want to ask Mr. Martin a question about your proposal to use $300,000 of carryover funds for timekeeping for grantees. I understand it will be a voluntary program since there is appropriations language that prevents any timekeeping regulations from being adopted for the time being. Are there some grantees who want to do that, and can you tell us about it?

Mr. MARTIN. I think there are. At the forum I held with a number of program directors, I raised that issue. Many of them, especially in the large programs, already practice timekeeping. There are a number that don't, and they have their reasons, but I think there will be some takers on a pilot project basis.

Mr. WITTGRAF. If I may, Senator, just briefly.

Senator RUDMAN. Go ahead.

Mr. WITTGRAF. Before our recess-appointed Board went out of existence, at the same time that the Congress adjourned last October, we had the opportunity to make just one trip to the field as a Board, and that was to the Denver area. We visited with the leadership, the director, and key staff members of the Metropolitan Denver Legal Services Program. A man named John Asher is the director of that program. He indicated that he had used timekeeping as a management tool for many, many years, and saw it as a necessity in operating what, in effect, is a big city law firm.

So it may not apply in all situations, but it is, as Mr. Martin indicated, utilized in many places. It is utilized very well by that program, which is a very successful program, and we think there will be takers.

Senator RUDMAN. Then based on that, you would come to us and tell us what regulation you wish to adopt; is that what the idea is?

Mr. MARTIN. That would certainly be up to the Board's discretion.

Senator RUDMAN. Yes; well, I am talking to you collectively.

Mr. MARTIN. We certainly would. Yes.

REAUTHORIZATION

Senator RUDMAN. Right. On reauthorization, will you be involved in this year's reauthorization process? I know last year, the Board at that time voted to endorse the so-called McCollum-Stenholm reforms, although I understand you did not endorse any specific language—rather you endorse it generally.

Mr. MARTIN. We are hopeful.

Mr. WITTGRAF. We are hopeful, perhaps naively so, that we can be players in that process. We are hurt by the fact that Congressman Frank's subcommittee is beginning to move next week on the issue of reauthorization, and Congressman McCollum has another proposal that he plans to put on the table later this week, I think.

Senator RUDMAN. That is correct.

Mr. WITTGRAF. I have plans to review that. Beyond that, we have a special committee of our Board, chaired by one of our Board members Basile Uddo, that will be responsible for reviewing the proposals that are on the table, and bringing forward, perhaps with more thought, deliberation, and specificity, our reactions to those proposals.

I said, hopefully naive, in the sense that we would like to think we can help narrow the differences regarding the reauthorization issues, and help build a consensus on the subject of reauthorization. It is my understanding that a bill may go from subcommittee to committee, perhaps even to the floor of the House this year.

AGRICULTURAL WORKERS PROTECTION ACT

Senator RUDMAN. I hope you will get involved. I hope it is a positive involvement. I was trying to recall the name of that legislation—the Agricultural Workers Protection Act; is that right?

Mr. WITTGRAF. AWPA. The acronym is AWPA, Senator.

Senator RUDMAN. You know, here is a marvelous example of the world turned upside down in the McCollum-Stenholm proposal, and why many of us strongly opposed it. Here the Congress passes a law to protect agricultural workers. I assume the Congress meant what it said. As a matter of fact, my recollection is that Vice President Quayle was very active, along with other members on the Labor Committee, in getting that legislation passed, and it went to President Reagan, who signed it.

I assume it is the will of the Congress that people who work in agriculture under certain definitions are entitled to equal access to the law. Most of them can't afford lawyers, so it fell upon legal services lawyers to enforce the rights Congress granted to that class of Americans under the law.

I am not from a farm State, but farm State Senators said it was very successful. That law addressed a problem. The farmers and the agriculture clubs are finding the law to be a nuisance.

So what do we do? We come with a reform which essentially makes it extraordinarily different to give the same rights to these poor workers and strips away the ability of legal services lawyers to represent these people. It say, "Well, you must go through this administrative process and that administrative process,"—essentially—"If you happen to be a migrant worker with a wealthy aunt in Cincinnati, you can hire a very good lawyer, and he can do for you what the Congress said you were entitled to, but if you are poor, you are not entitled to the protections Congress enacted."

Now, Mr. Chairman, I just want to say to you that I hope you do get involved, but I certainly hope that this Board will not endorse that kind of, quote, "reform". That is not reform; that is special interest protection in the name of reform. If you want to know why some of us get upset about this, it is because I really believe what it says above the Supreme Court. I really believe that, and when people start tampering with access to justice under the name of reform, it takes rather stern action.

So I hope that Mr. McCollum's new reforms are, in fact, reforms. I will support them if they are, but I hope this Board does not get in a position of supporting that kind of, quote, "reform", because that will hurt the credibility of the Board with the Congress, as far as I am concerned. You can take no position on it, if you want, but certainly not to endorse that kind of thing.

A couple of other questions; no more speeches.

Mr. WITTGRAF. Perhaps the greatest tribute to the success of the legal services attorneys over the last 25 years is the fact that controversies have arisen. Without such controversies, they would not have been successful.

Senator RUDMAN. That is right.

Mr. WITTGRAF. Those controversies are a tribute to their success.

Senator RUDMAN. It absolutely is, and nobody knows better than I do as attorney general of New Hampshire. I probably was sued more times by legal services lawyers for more things than anybody in the Congress, personally. They were right some of the times; not all the time. [Laughter.]

LEGAL NEEDS STUDY

Let me ask you this, Mr. Martin: You are going to do a legal needs study. Do you think maybe there are enough studies out there already? Do you think you ought to look and see what kind of a data base you have before you start spending money for that? Could you give us that assurance?

Mr. MARTIN. Yes; I am going to study what is available. In fact, at the American Bar Association mid-winter meeting in Seattle, I asked for, and will receive, all of the studies that State bar presidents have available, and we are going to assess them.

I am not going to spend any money, Senator, on a legal needs study. I am going to assess those. After that, I may gather data that would support the study.

COMPETITIVE BIDDING

Senator RUDMAN. You are also looking into the development of a competitive bidding system, which we have allowed under certain circumstances. I think you understand what the law says. I think the language is fairly clear, that such a system would not be put in place without a confirmed Board. I think the language is very clear about that.

Mr. MARTIN. It is clear to me, Senator.

Mr. WITTGRAF. And I think to our Board as well.

Senator RUDMAN. I certainly hope so, because we tried to draft that fairly pointedly here in this committee.

Mr. WITTGRAF. One reason there is $1 million set aside for Board initiatives in our proposal is with the thought that if we are confirmed, or a majority of us between now and October 1, that come fiscal year 1992, we would want to begin to move in that direction, on a pilot or test basis, and that some moneys beyond those already counted upon by the grantees, could be available for such pilot or test projects.

Senator RUDMAN. That is fine, and that is anticipated in the language. So there is not a problem with that.

FUNDING OF STUDIES

Finally, I just want to kind of comment, and it is really more of a comment than a question to Mr. Martin. I understand that you are going to have a philosophical study done on the delivery of legal services. It is fairly low cost; I think it is $15,000, for a contract awarded to Steven Kennedy for a philosophical underpinnings study. Am I correct?

Mr. MARTIN. Well, yes. He is doing some writing for me, and some studies. That is correct.

Senator RUDMAN. No problem with that. I just want to point out that in the last couple of years money has been wastefully expended. It is enough to make you cry when you talk about how money is needed in the field. Mr. Wear, your predecessor, spent $100,000 for a legal opinion on the constitutionality of how the LSC Act is drawn and how the money is spent; I mean, $100,000 to a law firm here in Washington. I could say something about the connections there, but I am not going to this morning. I am feeling a little mellow this morning, very little mellow, but a little mellow this morning.

Previously $100,000 was also spent for a contract award to a Charles Rowley. Have you got Mr. Rowley's report yet? That was on the economic and social implications of Legal Services Corporation. Do you have a copy of that?

Mr. MARTIN. I have to admit ignorance on that one, Senator. I am not familiar with that one.

Senator RUDMAN. It has not been published yet, but you paid for it.

Mr. MARTIN. I am ignorant. I hope I get it.

Senator RUDMAN. It will be an indictment of me and all my colleagues, I believe. To quote it, it assails a number of us for being mouthpieces for the Bar Leaders for the Preservation of Legal Services for the Poor, which is headquartered in New Hampshire. I didn't know that. But I am glad to know that.

I mean, we spent $100,000 on this piece of trash written by somebody who comes from so far-out on the right wing of my party he probably fell off into the pool. I mean, I have got to tell you that I hope we don't see any more money spent like this.

Mr. MARTIN. Let me assure you, Senator, you will not by me, but I am unfamiliar with that study. When, and if I get it, I certainly will share it with you.

Senator RUDMAN. Send me an autographed copy.

Mr. MARTIN. I will see if Mr. Rowley will do that. [Laughter.]

Mr. WITTGRAF. If I might make one comment in response, Senator Rudman. You are, of course, dredging up some things from the past for which Mr. Martin is not responsible, but as examples of where he does not want to go.

Senator RUDMAN. Exactly.

Mr. WITTGRAF. I would point to one example from Mr. Martin's administration. This past December, we had a dispute regarding so-called B funding with CRLA, or California Rural Legal Assistance. A decision regarding that dispute eventually was made by Mr. Martin, which avoided litigation and made, mostly, a wrist-slapping punishment of that entity, which we think got across our point at minimal loss of income to that grantee and at minimal expense to the Corporation. I would like to think that that speaks to Mr. Martin's efforts loudly and clearly.

Senator RUDMAN. I think it does, and in no way was I indicating any concurrence on his part on this expenditure of $200,000 for absolutely a waste of taxpayers' money. These people who talk about reform to save money, boy do they know how to spend it. It is unbelievable.

Mr. WITTGRAF. None of those contracts came to Iowa lawyers or Iowa grantees.

Senator RUDMAN. No; nor New Hampshire; mostly northern Virginia and the District, actually.

Mr. WITTGRAF. We get presidential candidates as you do.

Senator RUDMAN. Right. At least we did. [Laughter.]

Mr. WITTGRAF. We don't anymore, either.

Senator RUDMAN. The tourist industry is terribly off, and we are trying to encourage people to go up there, actually.

CLOSING SUMMATION

Senator HOLLINGS. You have asked for $28 million more and the bar wants $98 million more. We are going to do our best. You all made a pretty strong presentation.

Senator RUDMAN. We appreciate all of your testimony.

Senator HOLLINGS. We particularly appreciate the Secretary of State coming before State, Justice, Commerce for legal services for the poor.

Senator RUDMAN. Yes; we do appreciate that very much. It is outstanding.

PREPARED STATEMENT OF REGINA ROGOFF

Senator HOLLINGS. The subcommittee has received a statement from Regina Rogoff, the co-chair of the Funding Criteria Committee of the Project Advisory Group which will be inserted into the record at this point.

[The statement follows:]

STATEMENT OF REGINA ROGOFF, CO-CHAIR, FUNDING CRITERIA COMMITTEE, PROJECT ADVISORY GROUP

INTRODUCTION

I am Regina Rogoff, Executive Director of The Legal Aid Society of Central Texas in Austin, Texas. I am a co-chair of the Project Advisory Group's Funding Criteria Committee. I appear here today on behalf of the Project Advisory Group and its membership, the three hundred legal services programs providing civil legal representation to poor people throughout this country, to urge your support for a $475 million appropriation for the Legal Services Corporation (LSC) in fiscal year 1992.

1991 is a significant year in the history of Congressional support to LSC. Ten years ago, in 1981, Congress appropriated $321 million for the provision of civil legal assistance for the poor. The following year, in the face of a recommendation from a popular newly elected President to cease all funding for LSC, Congress reduced the appropriation by 25 percent, to $240 million. Finally, in this year, a decade later, the LSC appropriation has returned to and slightly exceeded $321 million. The 1991 appropriation is $327,186,000.

But, of course, the 1991 appropriation to LSC is far below the 1981 level when adjusted for inflation. As Congressman Neal Smith said on the floor of the House on October 23, 1990, "Back 9 or 10 years ago, the appropriation for this program was $321 million. This is all it was. In the previous year, 1990, the final appropriation was $316 million. For next year, it is only $327 million. This is one of the few accounts that has stayed at the same dollar level. Of course, that means a very substantial cut in real funding."

The consumer price index has increased by well over 50 percent during this decade. The components of the CPI that reflect business costs for a legal services provider have increased by a much greater proportion. The result of this decline in LSC support is especially startling when we look at our service in rural areas. The Rural Advocacy Section of NLADA released a study in November, 1990, contrasting delivery of service in rural America in 1980 and 1990. The study found that there was a 34 percent reduction in the number of offices and 39 percent fewer attorneys in 1990, as compared to 10 years ago. In my own program, one of two rural offices has closed; and, at the remaining office, there are now four attorneys, down from a peak of eight, including two VISTA attorneys.

Therefore, on behalf of our member legal services programs, their clients, staff, and Board members, the Project Advisory Group urgently solicits your support for significantly increased federal funding.

A BUDGET BASED ON THE MINIMUM ACCESS GOAL

The Project Advisory Group asks that you adhere to the funding principle that LSC itself first adopted in the 1970's, and that Congress consistently endorsed, that there be two lawyers who are adequately funded and supported to serve every 10,000 poor people. In contrast, there are more than 20 lawyers for 10,000 people in the general population. Two attorneys for 10,000 poor people will not provide equal access to justice. It will not provide the attorneys needed to fully meet the legal needs of the poor.

All of the legal needs studies conducted in recent years, including the ABA's own study, indicate that our legal system is only helping poor people in 15 percent of the situations where an attorney is needed. Achieving minimum access won't enable us to serve the other 85 percent. Two attorneys for 10,000 poor people will only provide minimum access to assure basic services in the most critical situations. This approach will allow legal services programs to use non-LSC resources to enhance service delivery and provide, for the first time in a decade, increased access to justice for their clients.

The goal of providing "minimum access" to the justice system through federal funding was first formulated by the Legal Services Corporation in 1975 in response both to the unmet needs described above and to the enormous geographic gaps in poor people's access to legal assistance. Congress, in the late 1970's, sought to reach large sections of the country then unserved by any legal services program and moved toward what came to be called the minimum access goal.

Full geographic coverage was achieved in fiscal year 1981, when the LSC appropriation first reached $321 million. Since then, funding has declined, but Congress has kept alive the promise of minimum access in its funding formula for basic field programs. The fiscal year 1991 LSC appropriations legislation, Public Law 101–515, provides that a portion of the increase in funding should be used to fill the gap between a basic field program's current funding level and the level required to provide funding at $17.68 per poor person, or minimum access in 1991 dollars.

PAG estimates that it would cost $744 million to provide minimum access in 1992.

The Project Advisory Group begins its budget calculations with this $17.68 figure, adds a projected 1991 inflation factor of seven percent, and estimates that the minimum access per capita should be $18.92 for fiscal year 1992. We then make an additional adjustment to the fiscal year 1991 appropriation for basic field programs to account for the increased number of people served by legal services programs.

All preliminary reports indicate that the 1990 census will show at least a 10 percent increase in the number of poor over the 1980 census. LSC grantees are already serving these people, and have been doing so for years. The census will only document their presence. PAG, therefore, estimates that we now serve 32.45 million poor people.

Based upon these adjustments for inflation and to recognize that LSC's grantees are serving more people than they served in 1980, the Project Advisory Group calculates that funding for basic field, or "census-based" programs, currently set at $280,314,000 would have to increase to $613,954,000 in order to achieve full minimum access. However, PAG proposes a three-year incremental return to minimum access and therefore recommends a basic field funding allocation of $391,539,000, which would fill just one-third of the gap between current funding and minimum access funding. Necessary increases to other service delivery components yields an additional $83,461,000, for a total appropriation recommendation of $475 million.

I will next explain our budget justification for service delivery components other than basic field programs—categories of "special census based" and "noncensus based" funding.

A Migrant and Native American Programs

About half of the Native American and nearly 90 percent of the migrant recipients are components of basic field programs. As long as the need for legal services far surpasses the resources available to meet it, questions about the probable size of theses special client populations will be largely irrelevant. The proportionate level of funding for migrant and Native American programs compared to basic field programs existing in 1985 resulted directly from 1981 LSC decisions about the adequacy of relative support for "special" and "basic" client populations. Until better information develops or funding levels exceed minimum access, LSC should seek to maintain historic proportionality.

B. State Support

The state support units funded by LSC have a long history of essential service to field programs and clients. Six of these units were established in the late 1960's. In the late 1970's, LSC completed a thorough study of the need for state support, concluding that such support is critical to effective client representation by field programs. As a result of this conclusion, LSC committed substantially more funding to state support in the late 1970's. Now, there are some 66 state support grants to programs in 43 states.

Funding for state support has declined since 1981 as a result of the 25 percent reduction of 1982 and several sequestrations during intervening years. A significant increase is needed to make state support available nationally and to adequately fund it to address its important goals.

These centers coordinate the work of legal services staff and volunteers in each state, and provide them with basic support and training. State support centers provide expertise in substantive areas of poverty practice that is sensitive to state laws and court procedures. They are essential to assuring that the funds allocated to field programs are used effectively and efficiently.

The Project Advisory Group has concluded that state support centers should receive funds equal to four percent of the amount granted to field programs which they assist. This increase will permit LSC to establish state support centers in the seven states that do not have them, assure that state support grants are minimally funded to provide a core of necessary services, and begin to equalize funding for state support on a per capita basis.

C. National Support Centers

The national support centers are a vital component of the delivery of legal assistance to low-income clients. Local program access to the expertise, specialized support, and unique materials offered by national support centers is necessary to the efficient and effective representation of eligible clients. Numerous studies of national support during the last two and half decades has confirmed the critical and essential role of national support centers in the legal services community.

Following the rapid expansion of field programs, a national study of unmet support needs was begun in 1978. After broad-based discussion of national support, the President and Board of the Legal Services Corporation embarked on a program to increase substantially the level of national support funding. While significant if partial progress toward its goals was made in the period 1979–1981, the Corporations' efforts were sharply set back by the funding crunch in 1982. In 1982 all programs generally shared in a catastrophic 25 percent cut in LSC funding, but total national support funding was cut by more than 40 percent.

Since 1982, despite strong support from field programs, national support has yet to be restored to even its 1981 funding levels (in absolute dollars, ignoring inflation), receives a decreased share of LSC appropriations, and has benefited from only some of the minimal program funding increases in the last few years. As a consequence, national support is now receiving significantly less funding relative to basic field than in 1981 or any of the preceding years.

PAG recommends that national support centers be increased to an amount equal to four percent of field program funding, a recommendation reflected in the fiscal year 1992 proposed "mark." Though this will not achieve the goals set for national support at the beginning of the last decade, it will permit the centers to again provide the full range of services they have historically provided. Theses vital services include consultation with local field program staff about difficult legal issues; significant assistance to local programs including, when it is warranted, co-counseling; national advocacy; training; publication of practitioners' manuals, newsletters, and other specialized materials; and monitoring the development of new legal issues affecting poor people.

D. Regional Training Centers, Clearinghouse, and Computer Assisted Legal Research (CALR)

In 1980, LSC devoted approximately $6 million to training. By comparison, PAG's fiscal year 1992 funding recommendation is $1.224 million for regional training centers, $1.517 million for Clearinghouse, and $1.068 million for CALR, for a total in these categories of $3.809 million. While the comparison is not a precise one, many of the training and support functions performed by regional training centers, Clearinghouse, and CALR were once addressed by LSC's allocation of almost double the amount of funds called for in PAG's recommended mark. Thus, PAG recognizes that training and support needs will remain substantially underfunded even at its recommended mark level. However, PAG seeks to adequately fund this important component of legal services support and restore this funding to its 1985 level, adjusted for inflation.

E. Reginald Heber Smith Fellowship Program

PAG strongly urges the reestablishment of the Reggie program. In doing so, LSC should continue emphasis on Reggie's two fundamental features: recruitment of minority attorneys and focus on community lawyering. LSC also should assure the historical allocation of Reggies to Native American and migrant programs and should return the program's administration to a grantee outside LSC headquarters.

A well administered Reggie program assures that fellows become wholly involved in the communities they serve. Their continuing presence in those communities heightens local program understanding of their clients' most critical needs. Creative, aggressive Reggies assure that programs (and LSC) focus on the Legal Services Corporation Act's mandate that LSC improve opportunities for low-income persons (section 1001(3)). To the extent that Reggies themselves come from low-income communities, their contribution or "community lawyer" links to clients can be even more powerful. LSC should give high priority to reestablishing the Reggie program.

F. Client Support

An entity should be funded to fill the void left by the defunding of National Clients Council. Such an entity should be the primary vehicle through which LSC assures minimally necessary training of the client members of local programs' boards.

The Corporation should promote client self-sufficiency by funding a client entity which can advise it and its senior staff about client needs nationally. PAG, consequently, recommends that LSC provide funding for a mechanism through which clients in various parts of the nation can obtain the support and training which clients throughout the nation need.

G. Corporation Management and Administration

LSC's fiscal 1991 Congressional appropriation designates $8.821 million for corporation management and administration. The conference agreement assumes that a 1990 carryover of $1,925,000 will be available for this line item, for a total amount left in LSC's discretion of $10,746,000.

In recommending a fiscal 1992 budget allocation of $8.876 million for management and administration, PAG has taken into account—as did Congress—that in recent years LSC has failed to spend all budgeted funds budgeted. Consequently, PAG's recommendation for fiscal year 1992 contemplates that in 1991, as in prior years, LSC will not fully expend funds allocated to this category.

H. Program Development

PAG recommends that no funds be appropriated in fiscal year 1992 for Program and Training Development, Technical Assistance, and Training Reserve, or for "competition and board initiatives" or "special contingency funds." This is consistent with the 1991 appropriation.

PAG recognizes the important role of research and experimentation to improve the capacity of the legal services delivery system, and we are cautiously optimistic that the new LSC Board will approach these issues in a responsible manner. Congress, however, intended that any 1991 funds used to study competition or for other initiatives, and to cover special contingencies, come from the $10.7 million available to LSC for management and administration. PAG recommends that a consistent budget policy be applied in fiscal year 1992.

CONCLUSION

This is a nation based upon law. PAG's recommended "mark" will only start us on a path that will assure that low income people have minimum access to legal assistance.

This is not a question of whether our country, given its economic circumstances, can afford to take this step. It is a question of whether we as a democratic society can afford not to take that step. As Congressman Les AuCoin said in the October, 1990, House debate of the 1991 LSC appropriation, "* * * one of the things that inspires all Americans about what has happened in Eastern Europe is the introduction of the rule of law. I think the same principle ought to apply to the poor in America—and without the Legal Services Corporation, it will not."

I respectfully urge you to reaffirm the national commitment to the purposes of the Legal Services Corporation Act and authorize a $475 million fiscal year 1992 appropriation for the Legal Services Corporation.

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. We will submit the balance of the questions for your response in the record.

[The following questions were not asked at the hearing, but were submitted to the Corporation for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Questions for David H. Martin, President:

I understand that one of the reasons you were selected President of LSC was because of your lack of involvement with the program and the controversies surrounding it during the last decade. Your record was clean, so to speak.

Q: Would you please tell us what your vision is for the Legal Services Corporation?

A: Mr. Chairman, let me begin answering that question by saying that my first goal as LSC President was to see to it that the debate over the continuance of the Legal Services Corporation was ended -- I think that has been accomplished. Open and clear lines of communication between headquarters and the field, established in good faith, needed to and have been reopened. That is crucial to any federal program's success.

Secondly, I know that I, and if I may speak for the LSC Board and the Corporation staff I manage here in Washington, D.C., we all are now looking forward to providing the poor of this country with greater accessibility to our judicial system. To see that this is accomplished is part of my, if you will, vision for the Legal Services Corporation. Through greater funding of the Corporation -- which is why I come before you today, to ask for an increase from last year's funding level of $327 million to $355 million for FY 1992 -- through improved efficiencies and management of the Corporation, which I have begun to address, and through an increasing involvement of private attorney-pro bono and Judicare work, this will be accomplished.

Q: I see where you have requested $1,000,000 to fund "Board" initiatives. Please explain precisely what Board initiatives you had in mind.

A: This budget line has been used in the past to fund such initiatives as pilot programs to stimulate and expand the provision of legal services in various locations across the nation. For instance, our Law School Clinic Program began as a pilot program back in 1984, and as you know, it now plays an integral part in our overall effort. The Board requests this money for FY '92 to fund similar initiatives which, as of today, are still being developed.

Q: Were you planning to commission your own study of unmet legal needs? Given Senator Muskie's testimony and the number of studies already conducted which illustrate the enormous amount of unmet legal needs, wouldn't this be a waste of scare resources?

A: No. At this time neither I nor the Corporation's Board have any plans to commission a study on unmet legal needs. I have received a number of studies on unmet legal needs from different states or groups around the country, and have instructed my staff to analyze any state or national study that is available so we can try and have a clearer picture of the level of unmet legal needs, its characteristics in each local community, and the basis for policies that will make better use of the limited resources we have to try and meet these needs.

Q: I see where you have requested $500,000 for special emergency funds. You had a similar request in last year's budget, but did not provide the monies, hoping that the natural disasters of 1989 would never be repeated again.

During this time of severe budget constraints, wouldn't it be wiser to apply these monies to basic legal services and then, in the advent of a natural disaster, scramble to reprogram monies to impacted programs?

A: Initially, I asked myself that same question. However, when disaster struck several of our programs in FY 1989, for example, the Corporation in several cases had to respond extremely quickly to alleviate emergency situations. A legal services program in the Virgin Islands suffered extensive damage in Hurricane Hugo. The entire island was without electricity for many months. The Corporation had to purchase and expedite the delivery of a generator to the program so its attorneys could begin rendering assistance to other hurricane victims. Similar problems occurred in South Carolina, and also in California after the earthquake. All the Corporation's funds are obligated each year, and in the case of natural disasters, such as Hurricane Hugo or the California earthquake, there is, as a practical matter, insufficient time to request additional funds or reprogramming authority from Congress.

Q: There had been some talk and concern over your proposal to provide central office personnel here in Washington with 9% pay raises, while lawyers and staff in the field get merely cost of living adjustments of 4%.

What kind of message are you sending to the folks delivering the services on the front lines (without whom you all in the central office wouldn't have a job) when you don't even request funding from Congress for the merit raises to cover all staff?

A: I am studying the past salary practices of the Corporation's headquarters located in Washington D.C. in order to possibly improve upon it. These are the only employees over which I have direct management or salary responsibility. I have not made a 9% salary increase "proposal" for the Washington headquarters. However, the operation of the existing pay system, when COLA's are included, may have this effect for a limited number of employees. For these reasons, I have created a staff committee to study and recommend ways in which the current LSC payroll system can be reformed to acknowledge both cost of living adjustments and merit, remain competitive, and still keep annual increases at a reasonable level.

Q: Are only workers in Washington meritorious?

A: Certainly not. In the five short months I have served as LSC President I have visited more than half a dozen LSC programs -- from Seattle to New York, from Mississippi and West Virginia to Minnesota -- and I know what truly important work they do to help the needy of this country. I am impressed with what has been accomplished with the resources that are available.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Questions for David H. Martin, President:

Page 5 of your budget request states that "In response to continuing criticism that legal services grantees were pursuing a 'law reform' agenda instead of assisting poor individuals with their legal problems, Congress added several restrictions on the use of LSC funds in successive appropriations acts." It strikes me that the rhetoric in your budget document is still somewhat one-sided.

It is true that several years ago, Congress imposed restrictions on certain activities of grantees, such as lobbying and abortion litigation. These restrictions have been routinely carried in subsequent appropriations bills. However, your statement refers to "continuing criticism" about grantees. In fact, the continuing criticism that Congress has had in recent years had been about overzealous efforts of the LSC Board and management to impose constraints on legal services grantees.

Q: While your budget document does not refer to it, wouldn't you agree that the only new appropriations riders added in recent years have been intended to restrict the activities of the LSC Board, and not the activities of grantees?

A: Yes, you have recently added several restrictions on the rulemaking powers of the Corporation's Board of Directors. Congress has repeatedly included language in the Corporation's recent appropriations bills that, for instance, restrict the Board's regulation writing abilities, while also prohibiting the lobbying and other political activities of LSC grantees. Most or all of these restrictions, we hope, will expire upon confirmation of the Board by the Senate.

Competitive Bidding

Your budget, on page 40, requests $1 million for Board Initiatives, including the development of a competitive bidding system for legal services grants. Our appropriations bill includes the following rider:

> After October 1, 1991, (but not before) the Board of Directors ... shall develop and implement a system for the competitive award of all grants and contracts, ... except that nothing herein shall prohibit the Corporation Board, members, or staff from engaging in in-house reviews of or holding hearings on proposals for a system for the competitive award of all grants and contracts, ...

Our language was intended to ensure that a competitive bidding system would only be developed by a Board of Directors which has been confirmed by the United States Senate.

Q: What are your plans for initiatives relative to competitive bidding this year, as well as for FY 1992?

A: At its meeting of Monday, March 25, 1991, the LSC Board passed the following resolution:

> BE IT RESOLVED that the Board of Directors of the Legal Services Corporation directs the President of the Corporation, in consultation with the Chairman and Members of the Regulations Committee of the Board, to study the issues involved in development and implementation of a system for the competitive award of grants and contracts, including support centers, and issue a report to the Board by October 1, 1991.

Subsequently, I have formed a staff Competition Committee, at the LSC headquarters, to study all issues related to competition so that I will be better able to respond to the Board of Directors' regarding the subjects that are likely to arise regarding a competitive bidding system, and provide them with the requested report before October 1, 1991.

Q: What activities has the Corporation engaged in to date relative to competitive bidding?

A: In 1989, the Provision of Legal Services Committee of the LSC Board of Directors held two public hearings on Legal Services and Competition: one in Shaumburg, Illinois; the other in Washington, D.C. At both hearings, members of the legal services community, program advocates and others, gave testimony on the prospect of a competitive bidding system for LSC grants. Also, as discussed above, the LSC Board has addressed the competition issue.

Funds for Outside Counsel

A review of LSC's February 15 transcript reveals that there was some discussion about your proposal to spend $300,000 for outside counsel this year, fiscal 1991. According to the transcript, it appears that this amount was requested because if competitive grant-making is implemented, it would spawn litigation.

Q: Our appropriations language prevents the development or implementation of a competitive bidding system until after the end of fiscal year 1991. While this restriction may be modified by Congress if we get a confirmed Board, wouldn't you agree that there won't be much litigation in this regard?

A: I agree, we do not anticipate litigation regarding the competitive award system until such a system is in place, which due to the limitations in the appropriations act could not be until sometime after October 1, 1991. If and when a competitive award system is in place, the potential for litigation is high, not so much because of the competitive system itself, but because of the due process rights of current grantees.

Q: In fact, we have restricted the implementation of any new regulations. Can you provide the Committee with some information about your anticipated needs for outside counsel?

A: First, the $300,000 was an estimated amount based on past years. Making such estimates, of necessity, must always be inexact. However, the $300,000 in anticipated costs for outside counsel is based upon past experience and the fact that LSC is currently a party to several pending lawsuits. Over the past three fiscal years, total outside counsel expenses have ranged from approximately $196,000 to $347,000 per year. Separate and apart from the volume of litigation, the hourly cost of outside counsel has increased along with most other costs. In the pending cases, it is anticipated that the Corporation will continue to incur substantial outside counsel expenses. These cases are handled by outside rather than in-house counsel due to several factors.

First, because LSC is involved in litigation throughout the continental United States, it is not always practical to use in-house counsel exclusively for these matters. Secondly, in-house counsel does not always possess the expertise nor familiarity with the local forum and practice necessary to properly represent the Corporation's interests in places as diverse and unique as California and Louisiana. Lastly, while we do support outside counsel with in-house assistance, the Corporation's in-house legal staff is too small to itself handle all of its other work and the substantial amounts of litigation to which the Corporation is routinely a party.

Questions for George W. Wittgraf, Chairman:

Page 16 of your budget states that "The Corporation has played an increasingly important role as a catalyst to stimulate and exploit alternative (non-LSC) sources of funding for the provision of legal assistance to the poor."

Last year, the Board voted, in principle, to endorse the so-called McCollum-Stenholm reforms. One of the bill's provisions would impose all LSC restrictions on private and IOLTA funds.

It is my view that provisions restricting non-LSC funds inhibit -- rather than stimulate -- private donations to grantees. For example, LSC eligibility guidelines include a means test. However, some private grants -- for the elderly of disabled for example -- do not permit the use of a means test.

Q: Do you have a position on imposing LSC restrictions on private funds?

A: The 1990 LSC Board, as you mention, did vote "in principle" to endorse the 1990 McCollum-Stenholm reforms. The 1991 Board has not taken a position on any type of "reform" proposal. However, the Board's Reauthorization Committee is scheduled to hold hearings on April 5 and 19, 1991, to examine the question of restrictions on use of non-LSC funds and other issues relevant to the reauthorization process. My personal preference is for as few restrictions as possible on private and IOLTA funds, consistent with the prohibitions presently mandated by Section 1010(c) of the LSC Act.

Q: If local programs demonstrate they have adequate accounting procedures in place to segregate the use of funds from LSC and other sources, why should we be concerned with how grantees use non-LSC funds?

A: It may be that concerns regarding the use of non-federal dollars will be diminished if the safeguards you mention are implemented. But we, as LSC Board members, must implement the law as it exists. As you know, Section 1010(c) of the LSC Act provides that "non-Federal funds" received by an LSC grantee "shall not be expended by recipients for any purpose prohibited by this title, except that this provision shall not be construed to prevent recipients from receiving other public funds ... and expending them in accordance with the purposes for which they are provided .... " Accordingly, the Corporation must be concerned with the expenditure of non-LSC funds.

Board Compensation

I understand the Board is considering raising the daily rates of pay for board members from the current level of $261 per day to $389 per day. I can understand that Board's concern that adequate compensation is necessary to encourage members to devote sufficient time to their responsibilities on the LSC Board.

Q: Would you care to comment on the Board's view in this regard?

A: The Comptroller General has determined that the previous compensation and reimbursement rates for the Board of Directors were in compliance with all LSC regulations and statutes entitling them to a per diem pay equivalent that does not exceed the rate of level V of the Executive Schedule. Accordingly, the increase in daily pay which you note is the maximum allowed by law. At its most recent meeting on March 25, 1991, the LSC Board passed a resolution increasing the daily rate to $320. The previous pay level had been in effect since 1985.

Competitive Bidding

In the past, the ABA has testified that competitive bidding in the indigent defense area has been fraught with a number of difficulties, particularly in the area of quality of services. There have been cases of low bidders receiving contracts without any examination of their background or capabilities. Problems also arise when competitive bidding results in the replacement of contractors from year to year.

Q: Will the LSC Board and staff be reviewing statements made by the ABA, and the existing data and studies on competitive bidding?

A: Yes, the LSC staff is studying and reviewing aspects of competitive bidding, as was directed in P.L. 101-515 and its report language. The LSC Board, and its Operations & Regulations Committee in particular, will attempt to evaluate and consider all available data relevant to potential competitive bidding for legal services grants. It is our understanding, however, that the ABA studies to which you refer involve the delivery of criminal rather than civil legal assistance.

SUBCOMMITTEE RECESS

Senator HOLLINGS. We thank you very much, and we are delighted to have each of you here. The subcommittee will be in recess until 10 a.m. on March 7. We will hear from Secretary Mosbacher at that time.

[Whereupon, at 11:29 a.m., Tuesday, March 5, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 7.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

THURSDAY, MARCH 7, 1991

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:04 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Rudman, Kasten, Stevens, and Lautenberg.

DEPARTMENT OF COMMERCE

SECRETARY OF COMMERCE

STATEMENT OF ROBERT A. MOSBACHER, SECRETARY OF COMMERCE

ACCOMPANIED BY:

- **ROCKWELL A. SCHNABEL, DEPUTY SECRETARY OF COMMERCE**
- **BRUCE A. SOLL, COUNSELOR TO THE SECRETARY**
- **THOMAS J. COLLAMORE, CHIEF OF STAFF AND ASSISTANT SECRETARY**
- **CRAIG HELSING, ASSISTANT SECRETARY FOR INTERGOVERNMENTAL AND CONGRESSIONAL AFFAIRS**
- **OTTO WOLFF, DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATION**
- **ALAN P. BALUTIS, DIRECTOR, BUDGET, PLANNING AND ORGANIZATION**
- **MARK E. BROWN, DIRECTOR, OFFICE OF BUDGET**

BUDGET REQUEST

Senator HOLLINGS. Good morning. We are pleased to welcome Robert Mosbacher, our Secretary of Commerce who will review the Department of Commerce fiscal year 1992 budget request. That request for the Commerce Department is flat, $2.56 billion, or $78 million less than the current fiscal year. But that is a little misleading in that there are a lot of changes within that number.

The administration is proposing to terminate, for example, the Economic Development Administration and its grant programs, terminate public telecommunications facilities and planning grants, and to cut $174 million out of NOAA, the regional climate centers and the fish hatcheries. So in total, the 1992 budget proposes to cut or terminate $441 million in Commerce programs that are operating today.

The Commerce budget also includes $454 million in program increases. These increases are must-pay bills, like $154 million for weather satellites. Others represent good Government programs like $13 million for the Boskin initiatives to improve Government statistics. We are pleased that the Department has proposed basic research increases for the National Institute of Standards and I commend the Secretary. He just announced two additional centers, and a plethora of those grants under the Advanced Technology Program all seem to be competitive, and you had quite a few participants.

On a small scale, Mr. Secretary, your budget mirrors what the overall summit agreement makes the discretionary Federal budget, a zero sum game. If one program is increased, another has got to be decreased. However, after all this time and experience of Congress strongly supporting such programs such as the sea grant and EDA, I don't think it is likely that they are going to be cut or eliminated this year, certainly not that amount. But we must hear from you and your justification for these proposals.

Let me yield to you, Senator Rudman.

Senator RUDMAN. Thank you, Mr. Chairman. I am anxious to hear from the Secretary and have no opening statement.

Senator HOLLINGS. Thank you very much. Do you feel all right?

Senator RUDMAN. I feel good. I am trying to feel good continuously.

Senator HOLLINGS. Yes, sir, Mr. Secretary. Welcome, and let us hear from you.

Secretary MOSBACHER. Mr. Chairman, Senators, it is good to be back. Thank you.

PREPARED STATEMENT

Senator HOLLINGS. Incidently, your statement in its entirety will be included in the record, and you can highlight it as you wish.

[The statement follows:]

STATEMENT OF ROBERT A. MOSBACHER

Mr. Chairman and members of the subcommittee, today I am here to present to you my fiscal year 1992 budget request, totaling $2.56 billion, $78 million less than last year's. During the past year, even as the continuing budget situation has caused belt tightening all across government, at the Department of Commerce we've been able to continue implementing the programs of the President and of the Congress that are so important to us all. We want to continue in that spirit in fiscal year 1992.

Competition in the world marketplace will challenge our trade position and technological supremacy. Sharpening our ability to respond to this challenge, and indeed, maintaining that position and supremacy, is our priority initiative in the fiscal year 1992 request.

I'm chairing the trade promotion coordinating committee (TPCC), an interagency effort to harness federal resources serving American exporting businesses, and provide "one-stop shopping" for information on markets, financing, regulations, and other information. The TPCC has joined in a national export initiative, a series of high-level conferences and follow-up events being held throughout the country this year. These conferences will show how the federal government can be a powerful resource for the U.S. exporters. The standing-room-only kick-off session was held on February 6 in Minneapolis, and our second session was held in St. Louis on February 26. I'm glad to see effective teamwork on the initiative by the 18 organizations involved, including Commerce, the Small Business Administration, the Export/Import Bank, the Overseas Private Investment Corporation, and the Agency for International Development.

Improving the competitiveness of the American economy also depends on improving our understanding of how the economy really works. While the federal statistical system provides us with a good picture of where we now stand, the rapid changes sweeping across our economy mean that we must gather new types of data to keep the picture in sharp focus. The President has approved a new initiative to improve the quality of economic statistics, and much of the load will fall on the department's statistical agencies.

Our staff at Commerce, along with all Americans, is pleased with the return of freedom to the people of Kuwait. The crisis had been a personal one for us—many of you may recall that our foreign service officer was at risk during the siege of the American Embassy there last year, and that his son was detained by the Iraqis for a time as a potential security threat.

But looking ahead, we see an important role for Commerce in speeding Kuwait's recovery. This week, I opened our gulf reconstruction center, with Kuwaiti Ambassador Sa'ud Al-Sabah and Corps of Engineers General Henry J. Hatch. The center's 16 phone lines are taking 2000 calls a day from people and companies wanting to provide assistance in Kuwait's rebuilding efforts, and I know that the grateful government of Kuwait will be establishing considerable opportunities to American businesses to do just that.

To manage the very extensive workload we'll face right away in helping rebuild Kuwait, I'm asking for short-term additional U.S. and FCS staff, as well as some permanent staff increases in Kuwait and five other nations in that region to manage our long-term efforts.

Our fiscal year 1992 request is based on carrying out Commerce's mission in trade, competitiveness, improved economic statistics, and understanding the environment.

TRADE

We see exciting opportunities in international trade, as we take advantage of the fact that people around the world continue to press for democratic and economic reforms. To provide on-site guidance and support to the world-wide economic democratization movement, we are reviewing our staffing patterns, and we need to build upon our fiscal year 1991 overseas increases in the Asian/Pacific areas, Latin America, and, we hope, the Soviet Union. These are the areas where we see the greatest opportunity for growth, and it is vital that we have adequate staff there to support an effective foreign trade program.

As required by the Trade Act, Commerce launched the national trade data bank, a computerized reservoir of economic and commercial information. Part of the trade data bank, the commercial information management system, provides American business with up-to-date information on specific foreign markets and businesses. By placing this system in departmental field offices around the country and around the world, this system will become a concrete example of how small and medium-sized businesses, without a staff of international experts of their own, can get practical business help from their federal government.

We agree with the thrust behind the reauthorization of the Export Administration Act, but there is one feature of S. 320 that troubles us—the automatic sanctions concept. I'm concerned that this feature would unnecessarily tie the President's hands when exercising foreign policy initiatives. The department feels that the executive order already provides for the necessary tight controls.

Tourism to this country has a ripple effect across the economy, and we want to be able to reap the maximum benefit from it. We need to place staff in parts of the world which have the greatest potential for providing increased tourist business.

TECHNOLOGY

We are continuing our outreach approach with the advanced technology program (ATP) that provides funding for industry-led high-risk R&D on pre-competitive, generic technologies and helps bridge the gap between more fundamental R&D and commercial R&D. The ATP symbolizes the new spirit of cooperation between government, industry, and academia. Through programs like ATP, we can target gaps in this critical pre-competitive stage of development. With comparatively modest funding we can catalyze cooperative ventures within the private sector to pursue opportunities that would otherwise be missed. Two days ago, I announced the first eleven ATP awards, and we will soon be announcing our criteria for the second round of the ATP program.

Another outreach program is the manufacturing technology centers. We are establishing two new manufacturing technology centers in fiscal year 1991 and another in fiscal year 1992, for a total of six.

For the National Institute of Standards and Technology (NIST), our fiscal year 1992 request includes funding for R&D projects which will help keep American industry advancing technologically, in such areas as superconductivity and semiconductor manufacturing. The proposed 15 percent increase leads to approximately doubling NIST's budget by 1996.

The National Telecommunications and Information Administration (NTIA) will explore more efficient use of the spectrum by assessing the freeing up of part of the federal portion for private sector use. Between 1994 and 1996, this will lead to $2.5 billion more coming into the US Treasury. NTIA is working with the administration to prepare necessary legislation.

STATISTICS

We are an enthusiastic participant in the President's government-wide program to improve the quality of economic statistics. Our Economics and Statistics Administration is in the first stages of a multi-year effort to improve statistics on the service sector of our economy, on our balance of payments with the rest of the world economy, and, in many areas, on how price changes affect our ability to understand how our economy is performing. We are also starting a major program to keep our system of national accounts—our GNP statistics—reflective of the rapidly changing economy they represent.

The 1990 decennial census was the largest and most complex we've ever done. I give major credit to the Commerce staff and many outside groups who labored hard over several years on that census. It was a successful effort. Additional funding is needed in fiscal year 1992 for preparation and release of data.

But we've come to understand that the American society changes drastically between censuses, so we're starting right now to prepare for the 2000 census. In fact, Director Bryant has recently met with the Subcommittee on Census and Population to discuss the 2000 census. We've formed a department-wide task force to manage that effort, and I will rely on that group to give us the best possible advice on procedural and technological questions to be addressed in planning the next decennial census.

ENVIRONMENT

The National Oceanic and Atmospheric Administration (NOAA) fiscal year 1992 request is reflective of a very broad mission. NOAA scientists and research programs play a vital role in the interagency climate and global change program, and we manage a world-wide series of experiments and data-gathering programs that are helping us to understand the complex science of global climate change. Additional funds are requested to continue this vital work.

Our immediate concerns for our own continent start with NOAA's coastal ocean science initiative, which last year brought together a series of NOAA projects in this area into a comprehensive whole. In 1992, NOAA will participate in coastal America, a management initiative designed to leverage existing individual agency marine resources programs.

Weather service modernization is one of the very key priority areas of the fiscal year 1992 request. NOAA's development of automation in weather prediction really is quite impressive, but it requires more accurate, timely, and comprehensive data to be fully effective, and that is where Nexrad (next generation radar) and some of the other technological components of NOAA's fiscal year 1992 request become so vital.

I'd like to mention NOAA's satellite initiatives, too. For fiscal year 1992 we seek funds for the next series of polar orbiting and geostationary environmental satellites. These satellite systems will produce vital data streams for our weather service programs.

MINORITY BUSINESS

The Minority Business Development Agency (MBDA) has functioned over the years as a partnership approach between the federal government and business to help minority businesses start up and thrive. In fiscal year 1992, we seek funds to improve the quality and scope of MBDA services.

We have taken steps to improve the management of MBDA. MBDA is implementing a series of recommendations to improve operations based on a recent study. Further, I have appointed new leadership for MBDA. Joe Lira is now the Director and

William "Bill" Bailey is the Deputy Director. They will describe planned improvements when they appear before the subcommittee.

INTERNAL MANAGEMENT

We recognize that our financial management processes are not as modern as they should be, nor is the quality, timeliness, and consistency of our financial data what they should be. We're implementing the chief financial officer concept, and our fiscal year 1992 request includes funds for initiating a comprehensive financial management system.

CONCLUSION

The Department of Commerce fiscal year 1992 budget request is fully consistent with the President's plan to continue priority government programs; to initiate key new programs; and to drop ones which have outlived their usefulness, which have accomplished their purpose, or which the private sector or state and local governments can carry out.

Mr. Chairman, thank you for giving me the opportunity to present the department's budget and my priorities. I am happy to answer any questions that the subcommittee may have.

DEPARTMENT'S PRIORITIES

Secretary MOSBACHER. Thank you. Putting that on the record, I thought I would just make a few comments on some of the Department's priorities. As you know, the Commerce Department and I chair the Trade Promotion Coordinating Committee which consists of the 18 major international agencies in the Government, State, Defense, and Treasury, down through the OPIC and SBA and Export/Import Bank. The TPCC is bringing together all these different agencies toward achieving what we hope eventually will be one-stop shopping for American business.

We have had some trips overseas and we have been joined by people like Mr. McCumber of Exim and Mr. Zeder of OPIC. The committee has also started a national export initiative around this country. We started in Minneapolis-St. Paul with our first export initiative. These events usually start out with a welcome by the Governor and leading exporting companies in the area and then we go into all-day seminars that cover everything from quality in exporting and manufacturing to how to export and the financing of exports.

That is where we bring in the sister organizations and agencies like Exim and AID and OPIC and all the others who can actually help finance exports for these companies. We are aiming particularly at small- and medium-size companies. These events have been tremendously well attended. Besides Minneapolis-St. Paul, last week we had St. Louis; this coming week we are going to Cincinnati, then Hartford, Chicago, Omaha, and Atlanta, all around the country. We are going to do over 30 of them this year.

It is a major initiatve to help exports. Exports have already grown 8.3 percent last year and amounted to almost 80 percent of the total growth in GNP. We think we can do a lot more.

I am going to Kuwait next week. We are also working on the Gulf Reconstruction Center. We have 16 phone lines in the center at Commerce handling over 5,000 calls from people either wanting to get jobs or representing companies that want to get involved over there. It could create a lot of jobs for this country, and it is going to be a great help, we believe, to Kuwait and the other countries in the area.

MANUFACTURING TECHNOLOGY CENTERS AND ADVANCED TECHNOLOGY PROGRAM

We did, as you mentioned, agree to the competitive choice of two new manufacturing technology centers, one in Michigan and one in Kansas, to add to the ones in South Carolina and Ohio. We will later this year be opening another one to bring the total to six, which is our initial stage for these centers. We think they are also a great help not only to technology but also to our exporting agents.

This time around we had 20 States applying, so it was really a hard-fought, objectively merited, competitive effort that resulted in the selection of these two. We also awarded our first ATP, Advanced Technology Program, awards of close to $10 million to 11 companies ranging from Bell Labs of AT&T down to Hampshire Rogess of Massachusetts, a very small company working in new inexpensive x ray lithography. So we are getting that started in a very good way, again, through a merit selection process with judges both from inside NIST and from the outside.

STATISTICS

You mentioned again, Mr. Chairman, the Presidential statistics initiative for BEA and Census. Again, we need to improve our statistics. Perhpas we could have gotten a quicker handle on the recession if we had had a better statistical base.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

You also mentioned NOAA and the increase for the National Weather Service modernization. To that end, we have brought in Tom Giammo from the Patent and Trademark Office. He has done a great job with other people there modernizing that office, and we think we can finally get the procurements and new weather station effort going. None of us have been totally satisfied with the way NWS modernization has progressed. Some of the problems have been with suppliers, some our own problems and some have been due to material weaknesses and other difficulties we think we can cure now.

DECENNIAL CENSUS

As for the decennial census, we think it has been a very good effort and we are proud of the work that has been done. We had almost 500,000 temporary employees that have come and gone. It is almost as rushed an effort as a campaign where you put everything together and then disband it in a short time.

You see in our budget $10 million to try to get the 2000 census done on a more modern basis. We have been using pretty much the same methods for 200 years and, though they are tried and true, we can find newer ways of doing things. Those are just some of the highlights.

I also appreciate your consideration of Ambassador Schnabel's nomination. We hope to have him before you, at your early convenience, as our new Deputy Secretary. Also, John Keller has been nominated as his replacement at the U.S. Travel and Tourism Administration; Tom Collamore is our new chief of staff; and Bruce Soll is the counselor, replacing fellows who had gone out into the crass world of making money.

I stand ready to try to answer any of your questions, Mr. Chairman.

Senator **HOLLINGS**. If he had stuck with you, he would learn more about making money. [Laughter.]

KUWAIT

Mr. Secretary, you say that you have got 16 lines in there and 5,000 calls for opportunities in Kuwait. We get 16 lines and 5,000 calls, too. Is there some information you can give us or one sheet we can give and respond to these inquiries on how to make contacts up there? Have you got a game plan or does Kuwait or has the Emir told us how to do it, or do I have to call Khashoggi? [Laughter.]

Secretary **MOSBACHER**. I think so. We have a factsheet for you and we will hand it out. This is the detailed story of how we proceed. When we go to Kuwait, we will be opening our offices.

You can look through that at your leisure, sir.

Senator **HOLLINGS**. That will snow them all over in bureaucracy. [Laughter.]

Senator **RUDMAN**. One was a telephone number.

Senator **HOLLINGS**. That is right. I don't want to ignore the constituent; give him something sensible.

Secretary **MOSBACHER**. We are answering these calls from those who just want jobs, giving them a list of the suppliers that are in there, companies from Bechtel to Fluor, Haliburton and a lot of different companies that have already signed. Red Adair is another example of new contracts over there. We give the man or woman calling, if they are looking for a job, those names to match them up to the big companies that are looking for contracts.

We take it down and we give it to the Kuwait Ambassador's new services officer. If they want to call him themselves, they can call the Kuwait Embassy's Office of Business. That is what we are doing, and when we go in next week we hope to, as soon as possible, reopen the Foreign Commercial Service offices in Kuwait City and the other cities around that area so that United States business can get their fair share of contracts.

Senator **HOLLINGS**. And that office in Kuwait City would have the better knowledge of exactly all of those entities to contact. So if we can get that number and who to write there and who is going to be handling everything, it would be a big help to us over on the congressional side.

Secretary **MOSBACHER**. We will put on one sheet of paper the numbers to call, the people to contact, and maybe a list of some of the contractors if they want to call them directly, and the Kuwait number.

Mr. **COLLAMORE**. Some of that is in the package.

Senator HOLLINGS. Some of that is in the package now, and we will try to simmer it down and see if we can get Reader's Digest or U.S. News to do it; maybe we can get a little rundown on the Wall Street Journal's front page.

EXPORT CONTROLS

I am vitally interested in this export control. With respect to 18 coordinating agencies in the export initiatives can you explain to the committee where you have the responsibility and where the Department of Defense does?

Well, your friend and mine, Mr. Perot, out there was talking to you about matters of computerization on dual use. He had gone to Brazil and then later to Iraq, and we were being subjected to the charge of arming Iraq against us. What can we say about that? How do we control exports so that doesn't occur?

Secretary MOSBACHER. First, in that particular case, those have not gone and when and if they go to Brazil, much less to Iraq, they will have surveillance on the use and their disposition.

Senator HOLLINGS. They have not gone?

Secretary MOSBACHER. They have not gone.

Senator HOLLINGS. That is a falsehood. And if that is a charge, it is a false charge?

Secretary MOSBACHER. Right.

Senator HOLLINGS. Go ahead.

Secretary MOSBACHER. Exactly when and if they go, they will have close surveillance by our export control people all the time as to what they use them for and to ensure that they are not transhipping them without the required further approval.

Senator HOLLINGS. What is the penalty if they do not come back? In other words, I am down there and you have shipped them to me in Rio and I am shipping them to Baghdad, so I have violated the requirements. I have not come back; I have shipped them to Baghdad. What happens then?

Secretary MOSBACHER. Well, we can bring charges against them.

Senator HOLLINGS. I read about this in the New York Times.

Secretary MOSBACHER. We bring charges against them because they didn't live up to a contract that they had made to not tranship them.

We have people down there that have oversight authority so that we will know. We may elevate it to a national governmental situation, but we would begin with the company itself, doing what we could to close them down if they did not live up to their contract.

Senator HOLLINGS. Well, there ought to be some clear policies.

Secretary MOSBACHER. I do not know the legalities of just how you would do that.

Senator HOLLINGS. Please look into that and report back to the committee so the Congress can get the results. The Congress is very attuned to this issue.

United States chemical firms are limiting their shipments, as I understand it, to Colombia, Peru, and Bolivia to use in the processing of illegal narcotics, but our European allies, in contrast they are increasing the supplies. The drug enforcement agency has data that show they are increasing exports.

What do we do about that?

Secretary MOSBACHER. That is a tough one. What we are doing, starting with the President's proliferation enhancement control, is making sure that a list of chemicals that could be going to certain countries of high risk are not going. We started out doing this unilaterally, and so sure, you worry about our European trading partners' revenues.

But unless, by our leadership, they come along within a very short time and join us in this just as they have with COCOM where it works pretty well, then we are going to have to review it and decide whether we either come off it or they get on it or we find some other solution.

We have taken a leadership role in that we have decided that we would take the first step ourselves and not wait until everybody joined. I think it is the right thing to do, but if they do not sign up in a fairly short period, I think we have to review it and decide whether we are going to go some other route.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION REDUCTIONS

Senator HOLLINGS. With respect to NOAA, you are proposing to cut $174 million. You are cutting out of sea grant and marine mammal research, our National Weather Service research and development and everything else. As you well know, we have been trying to beef it up and get NOAA back to where it was some 10 years ago. How do we justify the $174 million cut of an agency like this?

Secretary MOSBACHER. Well, some of these things can be done best by the States. Some of them are already covered in grants we have already made. We also have $302 million in increases for NOAA this year, for the highest research initiatives in climate and global change. We have to find out whether there is a global warming or global cooling. Since it is on the very front burner of the world's environmental problems or opportunities, NOAA is a major source of this information.

Senator HOLLINGS. Exactly. You do not believe the States are going to get into marine research or weather research, R&D on marine mammals and these kinds of things.

Secretary MOSBACHER. Well, they do some in the States, do they not?

Mr. BROWN. There are some grants to States for some of these kinds of things.

Secretary MOSBACHER. In some of the universities and these types of places.

Senator HOLLINGS. There are grants to the States.

Secretary MOSBACHER. There are grants to the universities.

Senator HOLLINGS. It is interesting to see Senators, Senator Chiles, Senator Wilson, Senator Weicker all become Governors and now they are all looking for taxes. When they left town they were reading my lips. Now they cannot get by without backing the home States. They have got to pay the bills.

So we want to look very conscientiously at these different programs that work and work well, and if we had the money we would embellish them rather than cut $174 million out of an agency.

Secretary **MOSBACHER**. Only priority items can be funded under the new budget restraints. Analyzing global weather changes is such a high priority as far as we are concerned.

GOES SATELLITES

Senator **HOLLINGS**. Let us get to the global; let us get to the geostationary satellite program, and waste, fraud, and abuse. A GOES NEXT satellite is a fivefold or sixfold increase over what the GOES satellite currently in orbit cost. I understand that not only are there these tremendous cost overruns, but the first GOES NEXT satellite won't have any more capabilities than the current GOES satellites, and they will not be ready for the earliest launch until October 1992.

I know Secretary Cheney got rid of three admirals on one contract over there that he had to cancel. The A–12 program. Are you going to get rid of some admirals around that have fivefold and sixfold cost overruns that is not going to improve anything and can't come in on time? That sounds like a real negligent operation.

Secretary **MOSBACHER**. We are reviewing it. I am meeting every 2 weeks with NOAA on this. I started that within the last couple of months; maybe I should have started it sooner, but we are now reviewing it. We brought in Tom Giammo to lead the effort. If it requires other actions such as firing people, we will do it, but at this point, it is too early to say what we need to do.

Senator **HOLLINGS**. Are we going to be ready for the 1992 hurricane season? What is going to happen then? Do you have any contingency plans?

Secretary **MOSBACHER**. We do have contingency plans. We use the polar orbiting satellite to cover some of it. We will have to step up the in-flight observations and we are working with the French on their GOES satellites. We might get some help from other European countries and Japan later, but those are our alternatives, and we are trying to move with NASA to get this thing rolling.

Senator **HOLLINGS**. You see, it has been a pair-off with this committee. The administration says it is closing down the weather stations because we have got an improved GOES satellite. But when we examine the GOES satellite program we find this is not the case. So we do not get that and we are closing the weather stations and you and I could be in real jeopardy up here trying again to go to, like you say, the Japanese and everything else to find out about the weather; we are really going out of business in this country.

Secretary **MOSBACHER**. First of all, I promised everyone and have told everyone inside the Department that we are pledging that before they close one station or let anybody go, that they have to sign on to me that they will not diminish the National Weather Service that is already in that area. I can tell you that I have told NOAA that that is a pledge I intend to keep, and I expect them to keep it because their names will be on that sheet of paper that says they will not diminish it.

Senator **HOLLINGS**. Well, we will not belabor it. They have got one planned for closure right now in my own State in Greenville. I will have some other questions for the record.

ECONOMIC DEVELOPMENT ADMINISTRATION TERMINATION

We want to move on to these other Senators, but let me ask you on EDA now. You have cut back from where it was at $532 million back in 1980 down to $209 million, and by the time you leave we will get Secretary Baker. Secretary Baker will come here with a pocketful of money. International affairs has a separate cap that is not under the summit agreement.

If I put in a sewer line in Liberia for a business that will prosper and grow and help provide the economy of Liberia, that is a wonderful thing according to the administration. If I do that in Greenville, SC, that is a no-no, or whereabouts in Texas. You all do not have sewers out there, though, do you? [Laughter.]

Secretary MOSBACHER. I would try to answer that, but I don't think I better. [Laughter.]

Senator HOLLINGS. You see the point. I mean, let us take this victory spirit and support the troops. Let us support the troops back here, namely the working people, the production that brought on that technology. There is nothing wrong with our technology, and you are leading the way now and getting small business and entities going.

With our advanced technology programs, the centers and whathave-you, we are trying to rebuild this country and we cannot do that while we cut back, cut back and yet we are running all around the world like there is no tomorrow borrowing the money. We are spending $1 billion a day more than we are taking in right this minute.

We just can't, in conscience, tell the folks who are trying. The industries are there, the expansions, and you say send it back to the States. There are 32 States having to raise taxes just to keep their current credit rating. So we have got to take a well-proved program under Republican administrations, Democratic administrations, both, and not just knock off a couple of hundred billion there and then spread it around to somewhere else, particularly while we are increasing over there at the State Department level.

Secretary MOSBACHER. We think this administration knows that the States have fiscal difficulties, but as I said last year, we are not requesting EDA money, but we are expecting it.

URUGUAY ROUND

Senator HOLLINGS. Very good, sir. On the matter of the Uruguay round in the Office of Textiles and Apparel, it is how many job losses? In other words, it shows under your estimates, Commerce Department has been furnishing the statistical information and it shows that the imports under that would increase imports some 33 billion square meters.

What job losses do you expect as a result of that kind of that increase in imports?

Secretary MOSBACHER. I think what we talked about and have been pushing is that, if we get back into the Uruguay round of negotiations, there would be a minimum of a 10-year period. During that period we would hope that the job losses would be replaced by jobs in other industries or other parts of the textile industry.

That is one of the parts of the North American free trade agreement with Mexico about which I feel very strongly. If we do not work with Mexico on things, whether it is textiles or anything else, these jobs where there are lower labor costs are going to move even further away. They are going to move to Asia, Eastern Europe, or some other part of the world that has lower labor costs and then the next part of the textile manufacturing or apparel process, instead of being done in the United States, it will also not be done in Mexico, it will be done somewhere in Eastern Europe or Japan.

That is why the alternative of phasing it out over 10 years is going to give people a chance to move into these new areas. We do not want to see it happen overnight, but unless we face a competitive world and use our assets together, we in North America are not going to be competitive around this world. As I said earlier, the buildup of exports is our chief goal.

Senator HOLLINGS. We are competitive. You gave the Malcolm Baldrige Award for the most competitive, the most productive last year to a textile industry, Milliken. We are competitive and we are productive. They have already moved. I mean, they don't have textile plants in Tokyo. They financed and developed down in Indonesia now and in Mexico.

You have got Maquiladora and textile plants all over the place. They had waited on that so that is a given. You go down into Mexico City, it reminds me of the time I lost my tomato business because we could not use DDT and everything else; but they could. They were importing the Mexican tomatoes and putting my farmers out of business. This was 20 years ago. Now you go down into Mexico City and they say, "Do not eat that; do not drink this," because of the sewage.

They do not have sewage treatment systems there and it flows right into the fields. You better watch out. It will have some toxic waste in there; infectious diseases could spread. The State Department down there will warn you, "Do not eat that; do not eat that." But we come up here and say, "Let us eat it; let us trade it, it is wonderful," and everything else.

We know the differences not only in the wage rates, but also in environmental requirements, the publicly owned PeMex, oil, and so forth that you are in. You can compete with any company in Mexico, but you can't compete with the country of Mexico. There is the given there, particularly with respect to the antidumping rules I hope you will make certain that we try to enforce. We have said from the very beginning—and I am going to yield. I have got a bunch of other Senators here and we have got some wonderful attendance here—I said long ago, if they enforce the dumping laws that are presently on the book, we could throw away the textile bill. We don't need it. But we can show each year how they have violated and in what amounts. You show it first. The Department of Commerce shows how much comes in in violation. And now in all those negotiations as to antidumping, they want to weaken those because American manufacturer business fellows are way smarter than us politicians. You find out how you can produce overseas very, very cheaply and come back over here in the business council and holler, "Free trade, free trade". So as long as you can keep this open for your dumping, business leadership—not you because you are in oil. I wish you would dump a little of that oil. [Laughter.]

All these products outside business council I have to go and look at them and they are all gone. A lot of them used to be in my State, and as long as they can keep this market, as they call ready for dumping, which is the cry, "Free trade, free trade," they continue to prosper and the country looses its industrial backbone. Sixty percent of the clothing in this room is now imported. I remember when I was complaining about 10 percent and Tom Dewey was representing the Japanese before the old International Tariff Commission. Eighty-four percent of the shoes on the floor are imported. I bought an Elgin watch I renamed from Elgin, IL, and renamed the town Bladen. They do not make a watch in America.

Let me yield to Senator Rudman.

Senator RUDMAN. I am not sure where to start.

Senator HOLLINGS. But I got a lot of other good questions. Go right ahead.

EXPORT LICENSES AND IRAQ

Senator RUDMAN. I have a few on a few specific points. The Customs Service has written to your agency and asked for the list of companies that have been issued or denied licenses to Iraq. Now, of course, the Export Administration Act provides dual enforcement responsibilities, both yours and theirs. There has not been an answer to that and there have been a number of requests over some period of time. The most recent request is on February 11 by Ms. Hallick, and she points out correctly that only the Congress or another Federal agency involved in the analysis of the application under the statute is allowed to share the information. However, the Under Secretary for Export Administration can make an exception based on the national interest. And that is specifically in the law. That letter was dated February 11.

That is not a month yet, but there have been prior requests. Curiously, part of the list appeared in a November edition of the Washington Post which I am sure you are aware of. My questions are very simple. No. 1, why has the Department failed to provide the list to Customs in the past; and second, do you now intend to?

Secretary MOSBACHER. First of all, as you are well aware, there was a war on and we wanted to make sure that we were not releasing anything that would be damaging in any manner, shape, or form. That is why it had not been released earlier. Second, it will be released as early perhaps, as today, but certainiy within the next couple of days and that has been agreed upon with all agencies and with the White House.

Senator RUDMAN. Good. Certainly, knowing you I would assume that you would want Customs to be able to have the data base to help them in their enforcement because you have the best data base that there is. Well, I am glad that is being done. I want to talk about budget priorities for a moment, talk about NOAA and to look at priorities.

IMPORTANCE OF ONGOING VERSUS SYSTEMS ACQUISITIONS PROGRAMS

I just want to go through some numbers here. You have requested program increases of about $302 million. One-half of this amount, about $141 million, are essentially mandatory increases for weather satellite procurement. Another $57.4 million is associated with new hardware for the National Weather Service, and about $12 million reflects the reality that the current Landsat satellites are operating beyond their scheduled lifespan and they have to be maintained. A little over $91 million or less than one-third of the amount are true programmatic increases in NOAA.

I noticed that you are requesting programmatic decreases of about $164 million. While the cuts are not as Draconian as in the past, nonetheless, we do have such old friends as sea grant and a number of other ocean, coastal, and the fishery programs that a lot of Members of Congress think are very important. Looking at the prioritization that these numbers represent, I reached the conclusion that you have made a policy decision, which is yours to make and ours to review, to sacrifice ongoing programs essentially for satellite and hardware procurement because you must think that is very important.

My question, I guess, is: Is that what your policy says and if it doesn't say that, how else could I possibly interpret these numbers?

Secretary MOSBACHER. You are right. There are a lot of areas in which we would like to do more research. But we all have to prioritize and the National Weather Service modernization, which costs more than was originally thought, has been going on for 10 years now and must continue. I am not sure that in all aspects we would be totally proud of the progress we have made, but we have been working on it. What we need to do first is to get our satellite program up in space with the best possible coverage. That has to be the No. 1 priority because that is for the safety of Americans and American property.

We also have taken climate change as a priority because some people have been claiming, and I am sure with all good intentions, that there is horrendous global warming going on that is going to change the face of the Earth in a short period. We need to make sure that we have a scientific base for any conclusions we make before we go out and spend billions, tens or hundreds of billions, of dollars around this world on changing all sorts of things such as dams and everything else. That is top priority.

Senator HOLLINGS. The appropriation is there. That is what we put it in law last year. We took the FCCSET, the executive committee, and institutionalized it in law and his department has got really, the research. That is the only authoritative research we have on climate.

I am sorry.

Senator RUDMAN. That is no problem.

Secretary MOSBACHER. You are absolutely right, those are the top priorities. We are not against the Sea Grant Program. We think a lot of it can be picked up by the States and the private sector. If we had the money, of course, we would do it, but we just have to look at what is most pressing.

Senator RUDMAN. I accept your answer, and that is a decision we will have to review. It just seems to me that we have got enormous problems with growth of costs which are gobbling up the increment that we thought would help the other programs.

SHORT-TERM SATELLITE SOLUTIONS

For instance, you know, I have been either chairing or ranking on this subcommittee for 10 years with my friend from South Carolina and I know this happened before your watch, but it is going on during your watch. But we were told the cost was going to be $450 million for five new satellites. It is now up to maybe as high as $1.1 billion. Senator Hollings has talked about that, so I am not going to repeat it but the fact is that on the geostationery satellites, I am wondering whether or not there is not some short-term solution which will give you the coverage you need. When I look at the cost of the geostationery satellites, look at the fact it is having development problems, enormous cost overruns, I look at the budget agreement and I am going to assume, unlike my friend here, I am going to assume blithely that we are going to live by it for 5 years. He is probably right and I am wrong, but I am going to make that assumption. If you have that kind of growth and that is your policy, we are going to gobble up so much money over in your Department, we are going to have very little left other than hardware.

So I am wondering whether or not in terms of weather prediction there are some short-term solutions. Some have been suggested, and I am just wondering if we ought to do some short-term intervention here as a backup lest we find out next year that the cost overruns, in fact, have happened and you come back to us and very accurately say, "I don't have any money for anything else except for this hardware," and then we are truly in one terrible mess. That is my point. How do you respond to that? What are we going to do to stopgap against that happening assuming we have no more money?

Secretary MOSBACHER. I will have to start out saying Senator, that I agree with your point. That is why we are having biweekly meetings on this. We also have two agencies involved here and, therefore, we do not have full control of the costs. We do not even have more than very partial control of the costs, and I am not sure that makes sense. One agency is responsible for one part of it and another one for another part. In the short term, we have talked about moving the polar orbiting satellite around so that we can get some help from the Europeans on more flights and things like that. But that is not a long-term answer; that is kind of an emergency answer.

Long term, we do not have a short answer. We have to find a better answer to the cost and to the efficiency.

Senator RUDMAN. I think that is one of the things this committee would find very useful, because we sit around here in markups in this room; we shut the doors and we sit down here and we start out with a pile of chips on the table, and all of a sudden the chips are gone and the needs over here are still unmet.

We have gotten into that position over the last several years with our budget allocation. It has been truly difficult to keep our responsibilities to you, to keep the basic requirements of your agency running. So I am going to request, and I am sure the chairman would join in this, that sometime in the next 3 months, if that is a reasonable timeframe, that you get back to this committee with some of your best estimates at that time of what these hardware costs are going to be. Because if it looks like they are going where I think they may be, then the chairman and I need to have some very serious discussions with OMB, with the chairman of the Appropriations Committee, and with others.

Senator HOLLINGS. And the distinguished Secretary could have it ahead of time with OMB and give us your contingency plan, because I am convinced that we are going to have to go to some contingency plan. We are not going to be able to cover it with our agencies the next year.

Senator RUDMAN. I have looked at the numbers, Mr. Secretary, from our point of view. You have to look at it programatically. We have to look at it from what is available. Nobody disagrees with the need; your answer is right on, but we cannot get ourselves in a situation late this year or early next year where our allocation is gone and we have no money whatsoever.

1991 SUPPLEMENTAL FOR THE INTERNATIONAL TRADE ADMINISTRATION

Now, the question, then, is: Will they declare an emergency? Which brings me to my next point, and this is kind of interesting. I think my facts are right. You have asked for additional foreign commercial service staff for Kuwait and five other nations. At least you are not asking for much money. A proposed supplemental appropriation of $2.9 million is what the House has recommended for the ITA. The House added these funds, which were not formally requested, but I assume if you are going to put more people over there, it is going to cost more money. I assume you would not disagree with that appropriation. Or can you absorb it? That is the question.

Secretary MOSBACHER. Our first effort is to really try to absorb it.

Senator RUDMAN. Right.

Secretary MOSBACHER. We will have to look at that and maybe we can move things around from places that are less pressing.

Senator RUDMAN. Do you think it is pressing and urgent that we have these additional people?

Secretary MOSBACHER. Oh, we have got to do it.

Senator RUDMAN. You have to do it?

Secretary MOSBACHER. It is an opportunity for two things: One, I think we have got the moral and actual obligation to help rebuild this country. Two, it is an important opportunity for U.S. business.

Senator RUDMAN. All right. I agree with that. Now, let me tell you something very interesting.

Secretary MOSBACHER. Yes; we need to do this.

Senator RUDMAN. You do. Let me tell you a very interesting fact which you may be unaware of. We were informed yesterday by OMB that they will not consider that appropriation to be an emergency. I disagree with them, but that is what they say.

Looking at your budget and how little flexibility it has in it, I dare say you might need some additional money in that supplemental. Do you think that this is a matter that falls into the emergency category in terms of getting into Kuwait with more foreign commercial service people and generating American exports, if you will? Do you feel it is of an emergency nature?

Secretary **MOSBACHER**. Yes; I think I would. Let me say that, in my view, it is not only an emergency, but it is a must. We are going to do it, and we are either going to do it by taking something from another part of ITA or the United States and FCS which we think we have pared down to what is essential now, or we are going to do it with additional funds.

Senator **RUDMAN**. Well, our point is this: I hope you would, in your conversations with Mr. Darman, impress upon him that if you do not have the funds to do it that they will so declare it an emergency, because if it is not, I dare say we are not going to put it in here. Because if we do we are guaranteeing a sequester across a certain portion of our appropriations accounts. We are just not going to do that. If the Secretary of Commerce thinks it is important then OMB ought to say it is part of this whole problem and we ought to have an emergency declared, therefore, taking it out of the budget agreement for purposes of sequester. Frankly, we spill $2.9 million, and I would think that they would be willing to waive that.

U.S. TRAVEL AND TOURISM ADMINISTRATION

Finally, I want to talk about the U.S. Travel and Tourism Administration. You have a $1.9 million increase there. I understand you are going to enhance tourism promotion offices in Japan, Australia, and South Korea; am I correct?

Secretary **MOSBACHER**. Yes.

Senator **RUDMAN**. And you are going to do some outreach with that that is different than you were doing to try to enhance tourism. Is that what you are doing, particularly with the dollar where it is today?

Secretary **MOSBACHER**. Of course, we get more bang for the buck in the tourism office. As you know foreign visitors spend $53 billion in this country and we think we get a tremendous return from our budget.

Senator **RUDMAN**. The total budget for that agency, by the way, is very small. I forget the precise numbers, but it is under $20 million, is it not?

Mr. **BROWN**. Our request is $17.6 million.

Senator **RUDMAN**. And that is for offices. Where are your offices now worldwide? Mr. Secretary, we have offices in London, Paris, Bonn, and Rome?

Secretary **MOSBACHER**. Many places.

Mr. **BROWN**. We have offices in Canada, Mexico, London, France, Germany, Japan, an international congress office in Paris, Australia, Italy, The Netherlands, and a Miami office serving South American countries.

Senator **HOLLINGS**. $1.5 million a month we put in there for Hugo assistance. Don't raid it. Somebody in your Department is trying to raid it and use it for other programs.

Secretary MOSBACHER. What, you mean tourism?

Senator HOLLINGS. Yes.

Senator RUDMAN. They should come to South Carolina and see the destruction.

Senator HOLLINGS. That is right. Well, they have agreed. I congratulate our friend, Rock Schnabel, for getting together the private sector to get together $10 million just to put themselves in this country. On his own, with the airlines, hotels, and travel agencies, they are going to spend twice the amount you have got for your whole annual budget just to get this postwar recession recovery going.

Excuse me.

Senator RUDMAN. That is all right. I have a number of other questions, but I think I will either submit them or talk informally to the Secretary as I do occasionally. But, I would specifically say that I think the most important question I have this morning relates to this whole hardware cost-growth issue.

For the good of this Department, you have got to keep this committee informed to the best of your ability as to where these costs are going. I understand that you do not control some of the associated launch costs and so forth, so I hope you will have your people do that with our committee, with our staff. Keep us posted, because we are heading for a real problem this year as I look at our allocation, a serious problem.

Thank you.

Senator HOLLINGS. Senator Kasten?

Senator KASTEN. Mr. Chairman, thank you.

Mr. Secretary, I want to talk a little bit about trade. The International Trade Administration is going to go up by about 6 percent. The ITA is supposed to be both expanding overseas markets and also fighting unfair foreign trade barriers; is that right?

Secretary MOSBACHER. That is right.

INTERNATIONAL TRADE ADMINISTRATION INCREASE

Senator KASTEN. In this increase are you going to fight foreign trade barriers more aggressively or are you going to be expanding overseas markets or does this all go together? How do you plan to use the increase and what are going to be your priorities?

Secretary MOSBACHER. We are doing both. As was mentioned earlier by the chairman, we are enforcing and will continue to build our enforcement of antidumping and countervailing duty laws. I am very proud of the job our people are doing in that area. It has required some additional budget and we are giving it to them. We pursue these cases, whether they involve Canada or Japan or any other country anywhere in the world that is dumping, from our good friends to across the board. Cases are pending involving Mexico and Norway; they come from all over.

We are moving these cases faster and are becoming more effective in bringing them and following through with any U.S. industry that seeks help with this.

UNITED STATES-CANADA FREE TRADE AGREEMENT AND BREWING INDUSTRY

Senator KASTEN. Let me, if I can, talk about an important industry in Wisconsin, that is the brewery industry. As you know, we have in place the United States-Canadian so-called free trade agreement, but with regard to beer there is no free trade. As a matter of fact, it has gotten more restrictive for U.S. businesses, not less.

Also, if you look at what we might be doing now with Mexico, it is almost ironic. If you look at the beer industry, you see growth coming from the Mooseheads and the Carlings North and then coming up from the South, as you well know, from Texas, it is Corona and Tacate and Carta Blanca et cetera, and there you've got Pabst, Miller, or Leinenhugel in Chippewa Falls and in Stevens Point, WI, and they cannot export their beer either north or south, particularly north.

Now, there are all sorts of restrictions with regard to beer exports in Canada. They are getting worse, not better, over the last year or so.

Secretary MOSBACHER. We have brought a GATT case against Canada on this. The first meeting of the GATT Committee is, I think, March 19. We are pursuing this, and we are very aware of the restrictions. We are doing it through bilateral consultations, which have not been very effective, and by going to GATT on this one.

Senator KASTEN. What is your sense of what might come out of that meeting? Are you hopeful?

Secretary MOSBACHER. We would not have brought it to the GATT unless we thought we had a good case. We hope we will get some relief and be able to open up a Canadian market as it should be open.

Senator KASTEN. A lot of us want to help on that, and we look forward to working with you.

FAST-TRACK AUTHORITY

Let me just ask one other trade question with regard to the fast track questions that you and the administration and others are discussing. A number of people in agriculture, particularly dairy farmers, at least in Wisconsin, are very concerned. They are nervous because they believe that the international playing field for dairy farmers will not be a level one. All of us watch in the papers every day and have seen where the Europeans just simply they will move on a number of things, but they simply will not budge on agriculture.

What people in the Midwest are saying, not only dairy farmers, but people throughout the Midwest are saying, is that they want an even playing field. They are worried about a package where U.S. farmers would be asked to give up more than other countries would be giving up.

Basically, our sense right now is that no agreement would be better than a bad agreement. In other words, if they cannot move on agriculture we should not sign an agreement which starts to hold us back. The other question, of course, with regard to that is if there is an agreement whether it should be fast track where the Congress would not have input that it needs.

Could you just talk a little bit about the problems that my Wisconsin agriculture people are facing.

Secretary **Mosbacher**. Specifically with dairy products, extension of fast track has nothing to do with the dairy product situation at all. Let me tell you why fast track is so essential.

First of all, without fast track, we have never had the opportunity to open up these markets around the world for everybody, Wisconsin, South Carolina, New Hampshire, or anywhere else, because fast track means just that, with consultation, which Ambassador Hills is continuing to do with the Congress. Certainly I am available for consultation at any time with Congress also, and I hope that we move forward toward negotiating good agreements, whether bilateral agreements or Uruguay round agreements. Then the Congress comes in and it can ratify the agreement or vote it down.

I agree, and I certainly subscribed to this from the very beginning, that no agreement is better than a bad agreement. That should be true in any agreement, bilateral, multilateral, Uruguay round, free trade, or anything else. But the fast track will allow us to negotiate with these countries on an even basis to move toward making agreements that will allow markets to open up for U.S. products. That is why it is so important to get the fast-track authority, because without it, we would never see any agreements pursued. We could end up having people closing their markets to us. We are now moving toward diminishing, for the first time in 7 years the trade differential.

In other words, the imbalance in trade came way down. Oil prices took a jump this year. If the price of oil had been the same as last year, we would have reduced the trade deficit below $100 billion for the first time in almost 8 years. And we will see that happening. We continue to see our exports building quickly and our imports building at a much slower rate. So we need the fast-track authority.

Senator **Kasten**. Thank you Mr. Chairman.

Thank you, Mr. Secretary.

Senator **Hollings**. Senator Stevens, you are next. Let me just take that one point just for a minute. Where did we get that idea from on fast track? If the agreement is so good, why not look at it and adopt it in its normal course? That is all fast track does, not to say you are for or against the agreement. You can take ABM treaties. I have voted on SALT I treaties and everything else. You can put up an understanding, a reservation. That is for the national security of the country.

You get to a business deal, you come back, and it is supposed to be so good. They say it is good for the dairy farmers of Wisconsin, it is good for the textile workers. Of course, we know what they tell us. We have been through about a dozen of these special trade representatives telling us how grand it is, and I look around and everybody is gone. The business is gone; the dairy farmer is gone and everything else, so there is no education in the 6th or 7th or 10th kick of a mule. Why not look at it deliberately like we do our national security?

Secretary **MOSBACHER**. Because, as opposed to many other areas, and I am sure you know this better than I, each Member of Congress has his own or her own constituency and will have their specific area of interest, whether it is certain seafood or a certain dairy or textile interest. So, by the time Congress debates it, I am not sure that there is anybody in this room young enough to see any agreements that would ever come to pass.

Senator **HOLLINGS**. Well, I have been up here; this is my 25th year. That is nonsense. We take the most complicated things, debate them and pass or hold them up and that ought to be good for those entities that you are talking about. It ought to be absolutely good and absolutely competitive. We have been hearing all this other stuff, ramming it down, and not enforcing even the provisions of the so-called agreement.

We have got to have authority where you cannot even amend. It is clearly stated in the Constitution in article I, section 8 that Congress, not the Secretary of Commerce, not the special trade representative, but the Congress of the United States shall regulate foreign commerce. And here is my responsibility; I am supposed to throw it away because you say we would not live through the agreement. That is not the case at all. We have got reciprocal trade agreements, we have got all kinds of free trade agreements and we would probably get one perhaps—I do not know—with Mexico. Otherwise, I voted for free trade, and I was told at the time it was not going to help my textile industry. But in the overall good, I voted for it with Canada.

Go ahead. Excuse me, Senator Stevens.

Senator **STEVENS**. Thank you, Mr. Chairman.

MAGNUSON ACT AND 200-MILE LIMIT

Mr. Secretary, it is nice to see you again. I have just got two short questions. One pertains to the Secretary's authority under the Magnuson Act. You know, this committee has witnessed the development of the 200-mile limit legislation and the establishment of firm authority in the Secretary of Commerce to deal with problems of fishery allocation within the 200-mile limit, and you have specific authority to take emergency action. It is not limited to conservation only. As a matter of fact, your predecessor, Secretary Baldrige, was taken to court on this issue in the ninth circuit court. The court upheld a decision of the lower court that the Secretary has the right to prohibit, for instance, trawlers from fishing in a particular portion of the north Pacific such as the eastern part of the Gulf Alaska.

We are hearing statements coming out of your Department now that question the use of the Secretary's authority in allocation situations, and this is particularly true with regard to the factory trawlers. These factory trawlers are now so supported by the financial communities in New York and San Francisco and worldwide that they now have the capability, Mr. Secretary, to harvest all the fish from the Equator to the North Pole alone. No other fishing vessel of any nation ever need be involved if they are unregulated.

Factory trawlers could destroy completely the domestic fishing industry that we sought to and we did build up that was not even in existence prior to the 200-mile limit legislation. I would like to inquire whether you have a new policy in the Department of Commerce with regard to the interpretation of the Magnuson Act, and the specific authority that I cited that is in that act, which gives you the authority to take action, to uphold the regional council's concept, but, in particular, to make allocations without regard to conservation in order to protect the industry as well as the species.

Secretary MOSBACHER. Let me, Senator, first answer your question regarding the factory ships. We are very aware of the problem. We have not granted a license for one in 2 years. We are not planning to, and we are aware of that problem, and I think that we have that under control.

As far as the emergency order, I think what may have been said was the applicability of an emergency order in a particular case. We are aware that there are emergency situations under which orders should be given. There are other cases which should go through the normal procedures. So I think that is something that we have to look at on a case-by-case basis.

Senator STEVENS. I would like to have you take a look at it from the point of the general policy of your Department. My colleague in the House, Congressman Young, was told by NMFS officials that your Department has a new policy against Government interference through fishery allocations with the economics of the fishing industry. This would be directly contrary to what we intended as far as the Magnuson Act is concerned. You do have emergency rule authority in order to protect existing portions of the industry against really destructive actions by another portion of the industry. Without it, the small community-based fishing industry of the north Pacific, in Alaska and along the Washington and Oregon coasts, will not survive. I would like to know if there has been a change in policy. I would hope that there has not been a change because I would think that would be disastrous. We would end up with just factory trawlers and no shore-based industry.

Secretary MOSBACHER. I will check on it, Senator, but I do not believe it was ever the intent to fail to keep all the fishermen in the industries in mind. I think the only difference that I saw were those cases that fell under the emergency part of it and which went through the normal process, but I will check on it and get back with you.

WIND PROFILERS

Senator STEVENS. The other question is a simple one, really, but it is not simple for us. We have 40 active volcanoes in Alaska and the recent series of eruptions from Mount Redoubt destroyed not only our local air commerce and commerce with what we call the South 48, but it led to the removal of at least two major international airlines that now, as you know, go from the Orient across the Soviet Union into Europe rather than coming through the United States with the connections that are there for our people going on into Europe across the polar route from my State.

We asked for and got funds for five wind profilers that give NOAA the ability to predict the altitude and wind direction of ash clouds from volcanic eruptions so that the eruptions can be avoided. You recall that on at least two occasions, jet aircraft ran into those eruptions, the dust from those eruptions, with some rather staggering results—the engines were not able to continue to operate and they had severe damage to the airplane. I am told that the option to buy four of those profilers was allowed to expire; that we now have just one profiler and NOAA seeks reprogramming of the money we provided for those four profilers. I would like to ask you, Did you know of that? Did you know that this was done?

Secretary MOSBACHER. I learned of it recently. The reason for it was that, under the programming for these four profilers, they, according to NTIA impinged on the search and rescue spectrum. So they could not use that spectrum so they were no longer valid. We have one in place, I believe, right now.

Senator STEVENS. We have 1 in place in Alaska, but there are 25 in the rest of the country that have the same impact wherever they are used on the SARSAT system but those reasons were not used to cancel the other 25. They were only used to cancel the five for Alaska, and only Alaska has suffered the loss of aviation as a result of not having wind profilers. I mean, they are being used in the area where they provide information for the weather network and for the demand that is coming from the weather forecasting industry, but they have been denied now in the area where they had an actual impact on the economy of the United States. We lost two major airlines that previously came through the United States and will no longer serve us. I urge you to go back and look at that. I know that is the reason they gave you, but my information is that 25 are being deployed, that 5 will not be deployed and the 5 are the only ones that really had an impact on the economy of the country.

Secretary MOSBACHER. They told me that the others did not affect the spectrum, but I will recheck that.

Senator STEVENS. The SARSAT has the same impact countrywide.

Secretary MOSBACHER. But they are not impinging on a search and rescue spectrum. But I will check it and make sure that it is not a problem.

Senator STEVENS. Well, our people tell me if there is a problem, that the wind profilers can be turned off for the time that the SARSAT operates and turned back on with ease so that there is no interference. Volcanoes erupt all the time. The wind profilers are turned on when there is an emergency in our State. They are turned on for weather information anywhere else. So I really think that this is a bad decision. I urge you to look at them. Thank you.

Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

Senator Lautenberg?

Senator LAUTENBERG. Thanks very much, Mr. Chairman. Mr. Secretary, nice to see you. I watched you on TV this morning. You did a good job promoting tourism. I hope that it does improve because the dollar continues to decline in value. We do not want it just for selling bargains because we may need a little bit stronger dollar on the other side.

1990 CENSUS

Mr. Secretary, I am concerned that in the 1990 census, we may have undercounts of certain groups in our society, and under current laws, these undercounts can be adjusted correctly through statistical process.

In 1987, the Director of the Census Bureau wrote, and I quote here:

> The Census Bureau expects to have the capability to estimate more accurately than ever before the number of people missed in the census. We believe that we could improve the official census results by using the estimates to make some reductions in the differential undercount.

I make that point because I understand that you, pursuant to a legal settlement for the Department, will be making a decision whether or not to adjust the census for July. We have this precedential statement that would confirm the fact of an opportunity and the responsibility to do that. Do you think the Government ought to take every step that it can to ensure that no group is disadvantaged by the census?

Secretary MOSBACHER. Absolutely, and that is what we are doing and have been doing. I have had meetings with our people over the last 1½ years. I follow their progress on the census. I think we have been doing a very good job, but we continue to review it; we will be reviewing it and we will make the decision by July 15 as to whether we think it is a census that is full and fair or whether anybody was disadvantaged. That is all I can tell you at this point while I will continue to review all of the data.

Senator LAUTENBERG. I appreciate that, but do you agree that historically that minorities and persons living in the urban areas have been consistently undercounted more frequently than most others?

Secretary MOSBACHER. Let me say that we went into areas such as New York City, where we spent a lot of time, and other cities all over the country where we spent a great deal of time trying to assure ourselves and the country that everyone was being counted. We went back in. We had postcensus enumeration. We had several stages of sending the data to each city to get their input and go back and work with them. In many cases, in the cities that claimed they had different counts, we went back in and worked with them. Their counts were not nearly as accurate as ours.

Senator LAUTENBERG. Right. But you have people on the street, the homeless, and you have people who are illiterate and often afraid to respond. Do you not think that is predominantly in the minority or in the urban groups that you get that kind of distance from the census table?

Secretary MOSBACHER. We have the problem all over, but we have made a specific effort really to get to these people to count them.

Senator LAUTENBERG. I believe that you have. Do you not have enough material around that indicates historically these folks have been the ones that are subject to the largest share of an undercountage, if there is one?

Secretary MOSBACHER. Senator, at this point I cannot see that there is, but again, I am not claiming there is absolutely not one either. We are aware of the problem. We review it; we continue to work on it. In this town, we specifically had people out to count the homeless and other minority groups that might have been lost to the count otherwise.

Senator LAUTENBERG. It requires a lot of special attention, and I think you are among the few who are persuaded that the undercount that would from come these unavailable groups for all kinds of reasons might say there is a need, unfortunately, to reapportion the State legislative districts promptly in preparation for this November's elections, and therefore, it is essential that if there is to be an adjustment that it be implemented as soon as possible because obviously it is going to affect the outcome. The outcome wouldn't be fair, whichever way it goes. When can we expect a decision to be made on whether or not there will be an adjustment?

Secretary MOSBACHER. It will be July 15 at the latest. We are working every day to try and move it up.

Senator LAUTENBERG. I would urge you to work hard on this.

Secretary MOSBACHER. I believe we completed the redistricting count among the earliest to make sure that we had it early enough for early elections. For those States that have 1991 elections, we redoubled our efforts to move fast on them.

CONGRESSIONAL ACTION TO FACILITATE ADJUSTMENT

Senator LAUTENBERG. There is still quite a contest going on, as you know. We just had our redistricting commission formed. They had to finally appoint an 11th member to try to get through a tie but it would really be very helpful. Is there anything that Congress can do to facilitate an adjustment quicker or otherwise if we need any help with that?

Secretary MOSBACHER. We talk about it all the time. I asked them to redouble their efforts, and we will be glad to review it again.

Senator LAUTENBERG. Mr. Secretary, please put whatever effort you have available under this. It is very important. Again, it is not a mission of equity; we are not looking for a Democratic or certainly not a Republican advantage, but we want to be there. [Laughter.]

EXPORT LICENSING FOR SUPERCOMPUTERS

Mr. Secretary, your portfolio always amazes me. Even as I listened at the table, I think it is interesting whether it goes from fish, to milk, to beer, to census to all the other groups that report in to you. One of the concerns that I have, and I wrote to the President in November to express my interest; was my concern about continuing delays in issuing export licenses for low power supercomputers, IBM, and Cray Manufacturing, destined for Israel. Applications for export licenses to three leading Israeli universities have been pending for 2 years. I understand the applications are apparently being reviewed by an interagency group at the assistant secretary level. Can you tell me when a final decision will be made on these applications?

Secretary MOSBACHER. Supercomputers are considered dual-use items. As you may have heard this morning, we have on one hand people who are concerned that we may be exporting something to a country that might use it as Iraq did and then on the other hand, we do not want to disadvantage our United States exporters, IBM, Cray, or anyone else. So you go through a lot of interagency discussions and make sure everybody has signed off on it. We think that we will have this in about a month, though. I know it may seem like a long time, but it is an interagency process, as you have heard.

Senator LAUTENBERG. Unfortunately, interagency approaches are often used instead of a, and this is by no means accusatory, but they are often used as a way of saying no without saying no, and when I look at the situation, I see that the Israelis have agreed that once peace is in the area, they are into nonproliferation. India has its supercomputers. They sure did not agree to a nonproliferation status. Do you know why these applications have taken so long to be considered?

Secretary MOSBACHER. Pardon me?

Senator LAUTENBERG. Do you have any idea why these applications have been pending for such a long time?

Secretary MOSBACHER. Well, I think in many cases that in many of these countries, it is transshipment that people worry about or the dual use, as in other countries, leaving Israel out of it, that they use it for the possible design and work on nuclear weapons. So it is a very sensitive area.

Senator LAUTENBERG. In my previous iteration, I used to be in the computer business but is not the concern that Saudi Arabia has both Cray and IBM supercomputers? Abu Dhabi had a Cray supercomputer for more than 5 years. These are Israel's neighbors. If there is a concern about the use in the development of nuclear technology, I assume the same standard would have been applied to them. But those are done with.

Secretary MOSBACHER. Well, besides getting an answer which we think we can, for the most part I will be glad to review it and get back to you personally.

Senator LAUTENBERG. The United States has, has it not, already approved to sell two powerful supercomputers to India?

Secretary MOSBACHER. Yes.

Senator LAUTENBERG. OK. If you would, Mr. Secretary, this is very important. Israel is a good friend and ally. They have no designs on their neighbors. Everybody has. As a matter of fact, we all watch them take the punches. They choose the one to take, but they did it and I respect this.

I couldn't vouch for the fact that these computers could not be used for some nuclear development; I doubt it. There is a lot of very good medical research. There is all kinds of research. You know it is a highly technological society and they keep this capability. That is their strength. They do not have the oil; they do not have the minerals; they do not have the other things. I am sure they would trade them if they could but they are a technological society.

Mr. Chairman, I thank you very much. I have several other questions which I will submit to the record and I appreciate that the Secretary will respond to. Once again, let me comment that that is part of our job.

Senator HOLLINGS. Yes; thank you, Senator. In all candor, Mr. Secretary, there is no closer ally than Israel, and you do not have to worry about dual-use violations. In fact we would encourage it. [Laughter.]

Senator **LAUTENBERG**. It is a pleasure to serve on this subcommittee. One thing about Senator Hollings, he calls it like he sees it. Sometimes it is a little embarrassing.

FREE TRADE ZONES

Senator **HOLLINGS**. Let me ask one question, and I know the Secretary is busy and we are going to submit questions. Senator Byrd has some and the other members of the committee have some questions. Mr. Secretary, one of the things is the cancer on the industrial backbone in America free trade zones. That nettled me over the many years, because I watch the Industrial Belt up in the Midwest, Michigan, Ohio, Indiana, Illinois come right on back and down into Kentucky and all the way these foreign entities come in, they locate and then we get the assembly jobs.

They get a free trade zone. We bring those components' design under our free trade zone regulation and law to be assembled for export. But they are being assembled for domestic sale and that is an outright violation. Our regulations are not tight on it and now it has come full circle. They have one in my backyard, AUTECS. I said, "What do you want one for?" He said because the Commerce Department gave Hitachi one in Kentucky in January and that is our competitor. And we have been having a tough time competing with those in the Ford, GM ones." We thought we could do it, but once you gave Hitachi, it is one of the finest entities there that we brought in. It is Bosch and Nissan. It is automated automotive electronic engineering, the highest of technology. We got to get it now in order to compete.

There has got to be a cutoff somewhere. You see when you have reached the veil of intense of foreign trade zones then you have put yourself in the soup. These fellows have been losing all these parts, businesses, and everything else. They are not coming south. They are just going overseas because you can go over and manufacture them, bring them in. You and I had that with the golf cart case, and we are losing hundreds of jobs instead of creating the job because the competitor was there and we were paying for the Mitsubishi engine in those golf carts.

Now it has come again to hit home and not only lose the thing, I am going to lose unless I can compete within essence of violation of the free trade zone law.

I have been to Harrisburg, I think, Kentucky where Hitachi is when you gave them a license there. All he will tell you is it is limited. That is all we want. We just want what our competitors have got. Once you give it to the competition, we have got to have the same thing. So I would appreciate your looking at that and, once again, they tell me it will be a year. That is bureaucracy. These applications, whether it is critical materials like a computer, tell them no if you are not going to give it to them. But there is no reason for a 2-year delay on critical material and not even on the free trade zone. If my business is backed up 1 year, and if your oil business is backed up 1 year you would have gone broke. We have got to expedite somehow or the other over there the best you can. But look at that for me, please. I now will gladly hear your comment.

Secretary **MOSBACHER**. Mr. Chairman, I asked this question a couple of years ago and I just got an update. It always seemed strange to me that there is no law that precludes the sale of these free trade zone products in the United States. In other words, everybody claims they are doing it, bringing them in and then exporting the products. But there is no such law and I just asked to see if there is anything new on that. We do not know of any law that includes sales in the United States, and it seems to me that, if that is what they are using it for, there ought to be some restrictions on selling in the United States.

Senator HOLLINGS. You said that 2 years ago and we put in the law and the administration opposed it. Will you now favor it?

Secretary MOSBACHER. I personally favor it, yes.

Senator HOLLINGS. Well, that is good. You are in charge. [Laughter.]

You are closer to the President than Darman. [Laughter.]

That is what the President told me.

Secretary MOSBACHER. I will pursue it. [Laughter.]

ADDITIONAL COMMITTEE QUESTIONS

Senator HOLLINGS. The questions from various Senators to which were referred earlier will be submitted to you for your responses for the record.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Travel and Tourism

This Persian Gulf Crisis has caused a crisis for our travel and tourism industries. I have heard that tourism is off by over 40 percent.

QUESTION:

What special efforts are being made by the Commerce Department to assist the tourist and travel industry in recovering?

ANSWER:

To better understand the effect the war has had on the decline in tourism, USTTA conducted two informal surveys of approximately 100 representative foreign industry leaders. The results showed that while business was down substantially, most thought that travel would be back to normal within two months after the war's end. However, it now appears that travel could return to pre-war levels in less than two months. At the International Tourism Exchange (ITB) in Berlin, most tourism exhibitors reported brisk post war business.

In mid-January, an industry-wide coalition of travel industry executives was formed to rebuild consumer confidence in traveling for business and pleasure. On February 25, thirty-two travel industry executives met with then Under Secretary Schnabel to discuss the launch of a public awareness campaign designed to restore consumer confidence in travel.

The result was that airlines, hotels, car-rental companies and tourist attractions have pledged nearly $8 million to fund a drive-time radio and major print media ad campaign focusing on the benefits of travel and reassuring the public that airport security is at its highest level. The campaign will be initially aimed at the U.S. market but will later be extended internationally since travel increases within the United States will act as a catalyst for international tourists to travel to, and tour, the United States.

Deputy Secretary Schnabel has promised to supply appropriate support through USTTA's marketing and advertising personnel and, with the coalition's help, to conduct a comprehensive program.

USTTA, through its research programs, has identified where the potential international visitors are and what they want. The logical way to get the message to them is through the coalition.

USTTA worked with the Department of State and the Organizers of the ITB International Trade Show in Germany and the Borsa Internazionale del Turismo (BIT) show in Italy to substantially upgrade security at the shows. The process was difficult but it was worth while because the U.S. presence at these shows was strong and effective.

We believe we have done our part to help the travel and tourism industry recover swiftly.

QUESTION:

What is the status of the $5 million in tourism recovery grants that I added in the FY 1991 appropriation? Are you still waiting for OMB's clearance? If so, could you please expedite this -- so South Carolina's tourism industry can get on with its own recovery from another disaster -- Hurricane Hugo!

ANSWER:

USTTA has developed and cleared through the Department of Commerce the proposed regulations governing the administration of the Tourism Recovery Grants. They have been forwarded to OMB for clearance as of March 8. We will certainly expedite the clearance process to the maximum extent possible.

QUESTION:

Finally, you are not still thinking about reprogramming funds from this grant program, are you?

ANSWER:

No, USTTA was appropriated $1.1 million in the Dire Emergency Supplemental Appropriation Act of FY 1991 (P.L. 102-27) to reimburse the Judgement Fund.

QUESTION:

Please provide the Subcommittee with a list of all license applications for exports to Iraq in 1989 and 1990, with the name of the requester, the product and value of the sale and disposition of application.

ANSWER:

We will be providing Senator Hollings with a copy of the Iraqi print-outs that were given to Congressman Barnard.

QUESTION:

On the CONSARC furnace case, did Commerce at any time notify DOD or consult with any other agency prior to July of 1990?

ANSWER:

In June and November of 1989, CONSARC Corporation filed two export license applications with the Office of Export Licensing (OEL) as part of the sale of furnaces to Iraq. These applications were for the export of a computer system and a machine tool to Iraq. The end use statement contained in these two applications clearly indicated that the computer system and machine tool were to be used with the furnaces in Iraq.

The license application for the computer system was referred to DOD on June 23, 1989 and approved by DOD on June 26, 1989. Commerce issued a license on June 30, 1989. The machine tool license application was referred to DOE and the Subgroup on Nuclear Export Coordination (SNEC-an interagency working group on which DOD is represented) on November 22, 1989. The SNEC recommended approval with conditions on January 26, 1990. Commerce issued a license with the SNEC conditions on January 31, 1990.

QUESTION:

In July of 1990, how did additional information on the furnaces case come to the Administration's attention?

ANSWER:

The additional information relating to the sensitive nuclear end use of the furnaces in Iraq came to the Administration's attention from the intelligence community.

QUESTION:

On license decisions for exports to Iraq in 1989 and 1990--how many times did Commerce consult with DOE, DOD or other agencies and in these cases, how often was the license denied? In the cases where other agencies were not consulted, how often were licenses denied?

ANSWER:

The Department of Commerce processed 418 export license applications for Iraq during 1989 and 1990. Many of these applications were reviewed by other agencies. As required by existing referral policy, the same applications could have been reviewed by more than one agency. Of the 418 applications, the Department of Defense reviewed 296, Department of Energy 111, Department of State 9 and the SNEC 49. Of those applications reviewed by these agencies 19 export applications were denied.

During 1989 and 1990, in export license applications where other agencies were not consulted, no licenses were denied.

QUESTION:

Prior to August 2, 1990, what statutory basis existed for denial of licenses for export to Iraq?

ANSWER:

Attached is a "Fact Sheet on Export Licensing for Iraq" which addresses this question.

FACT SHEET ON EXPORT LICENSING FOR IRAQ

The Commerce Department's export licensing policy toward Iraq has evolved in line with overall U.S. foreign policy and national security concerns about Iraq.

Chronology of Major Export Control Actions

In 1982, the State Department dropped Iraq from the list of terrorist-supporting countries. As a result, there were two principal grounds on which a dual-use item subject to Commerce Department export controls could be denied to Iraq: (1) risk of diversion to the Soviet Union, Eastern Europe or the People's Republic of China (the COCOM-proscribed countries) and (2) items that could contribute to nuclear weapons development programs in Iraq.

In March and September 1984, controls were imposed on exports to Iraq of eight chemical precursors.

In November 1984, diplomatic relations with Iraq, suspended since 1967, were re-established.

In April 1987, foreign policy export controls were expanded to include a list of items that could be useful in the development of ballistic missiles. Since this promulgation of the Missile Technology Control Regime (MTCR), no license applications for any MTCR items have been approved for export to Iraq.

In July 1987, export controls were expanded for chemical precursors for Iraq.

In February 1989, foreign policy export controls were further expanded to include an additional list of chemical and biological agents that could be developed into weapons. Since the establishment of the chemical/biological weapons (CBW) regime, no license applications for any items subject to CBW controls have been approved for export to Iraq.

On August 2 and 9, 1990, President Bush issued Executive Orders suspending all trade with Iraq.

Interagency License Application Review Procedures for Iraq

The Department of Energy reviews license applications involving items subject to nuclear non-proliferation controls.

The Department of State reviews applications for items subject to foreign policy controls. Further, the State Department chairs the interagency Sub-Group on Nuclear Export Coordination (SNEC), which evaluates the more sensitive license applications involving nuclear non-proliferation issues. In addition to State, SNEC membership includes representatives from the Departments of Defense, Commerce, and Energy, the Arms Control and Disarmament Agency, and the intelligence community. The State Department also chairs the interagency Missile Technology Export Committee (MTEC), which evaluates applications subject to missile technology controls.

The Department of Defense reviews applications involving a select number of technologies to certain destinations to evaluate risk of diversion to COCOM-proscribed countries. DOD also reviews missile technology cases as a member of the MTEC and nuclear cases as a member of the SNEC.

Note: Under the Export Administration Act, foreign policy controls expire annually unless they are extended and Commerce sends an appropriate report to Congress on its implementation of those controls. A copy of the most recent report is available from the Office of Public Affairs, Bureau of Export Administration.

Iraq Licensing History From January 1, 1985, through August 2, 1990

The Export Administration Act and administration procedures require referral of certain export license applications to other agencies. During this period, license applications sent to other agencies were as follows*:

-- Defense: 704
-- Energy: 296
-- State: 80
-- SNEC: 66

The applications during this period were acted on in accordance with statutory and procedural requirements. The Department of Commerce approved 771 license applications valued at $1.5 billion.**

362 applications valued at $469 million were not approved.

* Some of these figures include referrals of cases to more than one agency.

** Four of the approvals were subsequently suspended. Three of the approvals were for over $1 billion worth of cargo trucks that were not in fact shipped to Iraq.

STATISTICS ON U.S. LICENSING FOR IRAQ

1985-1990

Each of these licenses was processed in accordance with the prevailing export policies and interagency procedures described in the BXA Facts - Iraq Export Licensing Fact Sheet.

Licensing Action

	Approved	Rejected	RWA#	Total
License Disposition	771* (68%)	39 (3%)	323 (29%)	1133
Total Dollar Value	$1.5 B**	$27M	$442M	$1.969B

Interagency Review

	Approved***	Rejected	RWA#	Total Reviewed
Defense Position	487 (69%)	20 (3%)	198 (28%)	704
Energy Position	177 (60%)	28 (9%)	91 (31%)	296
State Position	62 (78%)	5 (6%)	13 (16%)	80
SNEC## Position	24 (36%)	12 (18%)	30 (46%)	66

* This figure includes four licenses that were subsequently suspended.

** This figure included $1 billion worth of cargo trucks that were not shipped to Iraq.

*** Included in these approval statistics are those cases in which State asserted that no foreign policy controls applied and returned the license without review; cases in which Defense stated that it had no statutory role in reviewing the license; or in which any agency voiced objections but did not continue to escalate them.

# Returned Without Action

SNEC is the Sub-Group on Nuclear Export Coordination. This is a State Department-chaired committee with representatives of Defense, Commerce, Energy, the Arms Control and Disarmament Agency and the intelligence community.

QUESTION:

Today, absent the embargo, what statutory basis would exist for denial of licenses for export to Iraq?

ANSWER:

See attached "Fact Sheet on Export Licensing for Iraq."

QUESTION:

Please provide the Subcommittee with a detailed explanation of the actions of trade specialist Michael Manning in the Trenton, New Jersey office of DOC, on the CONSARC case.

ANSWER:

On June 21, export enforcement officials visited Consarc and received an update on current status. Consarc subsequently submitted the required statement of ultimate consignee and advised Manning of this on July 14, 1989.

Later in the year, Consarc received an amendment to the Iraq order adding certain machine tools. Manning suggested Consarc apply for a license; Consarac agreed. The license was referred to the Department of Energy (DOE) for consideration in November 1989. By the end of the year, the license was still pending. Mr. Manning advised Consarc accordingly.

In January 1990, a check with the DOE indicated that DOE and Defense approval were expected, with final approval expected from Commerce in late January 1990.

From February to June 1990, Mr. Manning continued to facilitate communications relating to these exports. In this period, Mr. Manning regularly communicated with BXA and the IEP desk officer for Iraq, including following the seizure of an unrelated shipment (the so-called "Super Gun") in the United Kingdom of prohibited materials destined for Iraq. Manning was advised it was still acceptable to ship properly licensed goods to Iraq and Consarc's order was not in jeopardy.

On June 21, 1990, Mr. Manning was advised by Consarc that its shipment to Iraq was being held by U.S. Customs in Philadelphia. Consarc had voluntarily agreed to the Customs action. Mr. Manning discussed the situation with U.S. Customs in Philadelphia and was advised it was a temporary measure.

On June 22, 1990, the shipment was formally detained by U.S. Customs. Consarc stated that it was unable to get accurate information from Customs and sought Mr. Manning's assistance in determining an accurate status of the shipment. Consarc believed it had done everything possible to comply fully with the regulations. On June 29, Mr. Manning visited Consarc to discuss the situation and try to answer questions. Consarc had invited officials from the Department of Defense (DOD), DOE, and BXA to visit the plant and review Consarc equipment, but the company had not received a response. Mr. Manning telephoned BXA, U.S. Customs, and DOD but he received little information. The situation had by this time become a large concern for Consarc, as it had other major orders pending in third-world countries. Export Enforcement and Export Administration officials visited Consarc on July 12, 1990.

In late June or early July, Mr. Manning called U.S. Customs in Philadelphia to inquire on Consarc's behalf about the status of the shipment, as the company had not been successful on its own in obtaining the status. Mr. Manning was advised that he should not be further involved, as the circumstances had developed beyond Mr. Manning's area of responsibility. Mr. Manning's involvement ended at this point, and he advised Consarc that it should continue to work directly with U.S. Customs and BXA.

QUESTION:

In the furnaces case, what intelligence community and nuclear experts were contacted by DOC prior to July 15, 1990.

ANSWER:

In the furnaces case, several participants in the export licensing process were contacted:

The machine tool license (described above) was referred to DOE and the SEC. The intelligence community participates on the SEC.

In addition, both license applications (described above) which were approved by Commerce to support the sale of furnaces to Iraq, were subjected to an enforcement screening process. BXA maintains a screening system which "flags" applications if there are enforcement concerns regarding any of the parties to a particular transaction. This screening system was developed and is updated with information available to Commerce from all interagency participants in the export licensing process (DOD, Customs, the intelligence community, etc.)

Two BXA engineers discussed the classification of the furnaces and the licensing requirements with CONSARC. One of these engineers visited CONSARC facilities in New Jersey to discuss the technical capabilities of the furnaces.

Based on technical specifications from CONSARC and the on-site visit, BXA classified two of CONSARC's furnaces as 6299G (State Department confirmed that the furnaces were not controlled as munitions items), which made the items eligible for export under a general license unless the transaction involved end-uses prohibited by the Export Administration Regulations.

One of these prohibitions states that if the exporter knows or has reason to know that the item is intended for use in sensitive nuclear activities, he must apply for an individual validated license (IVL) from BXA.

In several meetings CONSARC repeated its contention that the intended end-use of the furnaces in Iraq was not related to sensitive nuclear activities.

QUESTION:

DOC has claimed that the end use of the furnaces for nuclear applications was not known until July 19, 1990 -- yet in DOC's own chronology CONSARC notified DOC of this in the spring of 1989. Should Energy or Defense have been contacted at that point?

ANSWER:

CONSARC mentioned in conversation that certain metals that could be used in nuclear applications could be melted in the furnaces, even though the equipment was not large enough to be a production furnace. All the technical specifications of the furnaces indicated that they were not controlled for export to Iraq and, therefore, could be shipped without an IVL, unless the intended end use was prohibited by the EAR, including use in sensitive nuclear activities. But CONSARC stated that there was no indication that the furnaces would be used for sensitive nuclear uses, and Commerce did not have information indicating such use at that time.

QUESTION:

Attached is a story from the Wall Street Journal on export controls and CoCom. Please provide your comments on the issues raised in this article.

ANSWER:

Some of the most critical items in the Patriot Missile System (its guidance system and specially designed components) are under the licensing jurisdiction of the U.S. Department of State and are controlled by the International Traffic in Arms Regulations (ITAR). These controls should not be affected by any decontrol action taken in COCOM on the Core List.

Those technologies controlled by the Department of Commerce under the authority of the Export Administration Act which contributed to our success in the liberation of Kuwait will continue to require licenses for countries of concern under our foreign policy controls, irrespective of whether they are controlled in COCOM when the new Core List is adopted later this year. These controls are shared with our allies who participate in the Missile Technology Control Regime and other nonproliferation multilateral organizations.

Some of the technologies anticipated for release from control by the adoption of the Core List will be released because of inherent Soviet capability, and represent older equipment and technology. In many cases, these items are no longer manufactured by the United States.

The U.S. Department of Defense (DOD) was directly involved as a major participant, with representation from the Joint Chiefs of Staff through the Office of the Secretary of Defense and all the way down to the military branch field laboratories, in developing the U.S. decontrol proposal to COCOM. No action was taken in proposing any decontrol action without the full participation and approval of DOD.

Further, in some cases, COCOM controls on certain technologies will be strengthened, not relaxed, in response to national security concerns shared multilaterally.

Mexico Free Trade Agreement

QUESTION:

Your budget requests staffing increases for the proposed Free Trade Agreement with Mexico. And the President recently requested an extension of fast track authority for this initiative.

I do not doubt that this agreement would create more jobs in Mexico. But, why do you believe that a free trade agreement with Mexico would be good for American industry and labor?

ANSWER:

A North American Free Trade Agreement (NAFTA) would be good for U.S. industry and labor in three major ways:

1) Increasing U.S. Exports

- Mexico is already the fastest growing major market for U.S. exports. After the industrial nations of Canada and Japan, Mexico is the top market for U.S. exports.

- A free trade agreement, by stimulating economic growth in Mexico, will further increase exports. Consumer demand will rise, and capital goods will be imported to make much needed improvements in infrastructure. Mexico has a major predisposition to "buy American", and so U.S. exporters and workers will be big beneficiaries of this increased demand. Seventy percent of Mexico's imports come from the United States.

- o Exports are good for the U.S. economy and U.S. workers. Exports have accounted for 40 percent of the growth in U.S. GNP since 1986. Last year, exports accounted for almost 90 percent of GNP growth. It is estimated that each one billion dollars of exports generates over 20,000 jobs.

2) Enhancing U.S. Competitiveness

- o Global competition is an economic reality. The combination of U.S. and Canadian capital, highly skilled labor forces and advanced technology with Mexico's relatively low cost and abundant labor and growing consumer market, will make North America more competitive with areas such as the E.C. and Asia. This will save jobs in the United States.

3) Reducing Mexican Immigration

- o By providing economic opportunities in Mexico, a free trade agreement could decrease Mexican immigration. As President Salinas has said, Mexico would prefer to export products rather than workers. This would reduce competition for jobs in the United States, especially in lower wage sectors.

NAFTA - U.S. Laws on Wages, Safety and Environment

QUESTION:

Why do we maintain U.S. minimum wage laws, occupational safety laws and environmental protection laws -- if we are simply going to tell industry that it can relocate to a country that does not maintain any of these standards and it can import goods into the United States free of duty?

ANSWER:

- o These laws are designed to protect U.S. workers here in the United States. Our high standards will of course not be affected by a free trade agreement.

- o Most U.S. firms maintain their high U.S. environmental and labor standards in Mexico.

- o Mexico also has strong laws in the areas of labor and environmental standards. However, the economic situation in Mexico has made these standards difficult to enforce in practice.

- As Mexico develops its economy and increases its standard of living, which a free trade agreement will help it do, it will also be able to raise its minimum wages and strengthen its occupational safety and environmental protection laws.
- Economic development in Mexico is an essential step in reducing the disparity in the practical application of U.S. and Mexican labor and environmental standards.

NAFTA - U.S. Marine Mammal Protection and Endangered Species Laws

QUESTION:

I understand that the Mexicans already are not complying with several U.S. marine mammal protection and endangered species laws that come under your jurisdiction -- Mexico's tuna and shrimp industries are killing dolphins and sea turtles. What actions is the administration taking to ensure that Mexico abides by these laws?

ANSWER:

Tuna

- We believe that Mexico has made significant progress in reducing the number of dolphin killed in association with tuna fishing. In the past four years dolphin mortality has been cut in half.
- Accordingly, we have advised U.S. courts that Mexico should not be subject to a tuna embargo under the Marine Mammal Protection Act (MMPA). A recent Court of Appeals decision did not accept this position, and as a result the embargo may be reinstated.
- We continue to believe the best chance for a long term solution to this problem is the successful completion of negotiations currently underway to establish a multilateral dolphin conservation regime for the Eastern Pacific.

Shrimp

- We have held a series of meetings with the Mexican government in order to help develop more effective procedures for protecting sea turtles.
- We are encouraged by the steps taken thus far by Mexico as a result of President Salinas' May 1990

decree for conserving and protecting sea turtles. This decree prohibits the taking of sea turtles for commercial purposes. As a result, legal trade in sea turtles has ended.

- o We will continue to monitor the implementation of this law, and we are hopeful that our discussions with the Mexicans will enable us to reach a mutually acceptable solution and avoid any disruption of trade.

Dollar Devaluation and Exports

QUESTION:

Mr. Secretary, the Administration keeps telling us that the trade picture is good. Exports are up 70% over 1985 levels. Exports were $394 billion last year.

The U.S. dollar has plummeted since 1985. We used to get 240 yen to the dollar and now we get only 120.

How much of this rosy export picture is a result of the dollar's devaluation?

ANSWER:

It is not possible to specify, with precision, the contribution of dollar depreciation to recent improvement in U.S. trade performance. Analyses of this topic are complicated by a host of factors. One problem is that exchange rate changes typically have a delayed impact on trade, sometimes involving a lag of several years. Another complication is the difficulty of isolating exchange rate effects from the many other influences on trade. Perhaps the most formidable obstacle is that exchange rate shifts are not discrete, one-time events. The relative value of the dollar is changing constantly, making it very difficult to trace the trade impact of any given change in exchange rates.

For all the preceding reasons, extensive research in academia, government, and business has failed to come up with a way to predict with precision when and to what degree a given change in the dollar's value will affect U.S. exports.

It is clear, however, that dollar depreciation has benefitted U.S. exports. Over the 1985-87 period the dollar declined by about 50 percent on average against major European currencies and the Japanese yen. The dollar also fell by lesser amounts against the currencies of such key trading partners as Canada, Taiwan, and South Korea. There is no doubt that this round of dollar depreciation contributed importantly to the sharp improvement in U.S. trade which began in 1988.

Other factors have also contributed, however. Our persistent efforts to remove foreign barriers to U.S. exports have unquestionably helped boost U.S. sales abroad. Some of our most prominent trading partners have significantly lowered their tariff and non-tariff barriers to U.S. exports. During the last several years the U.S. has concluded a free trade agreement with Canada, reached agreements with Japan in a number of key sectors for the most competitive of U.S. industries, and negotiated deep tariff cuts with Korea, Taiwan and elsewhere.

Moreover, U.S. companies, together with their employees, have made great strides in boosting product quality, enhancing customer service, and containing costs. As a result, U.S. firms have become more competitive in the global marketplace--apart from any price competitiveness resulting from dollar depreciation.

Finally, U.S. firms today, compared with the early and mid-1980s, are much more aware of overseas business opportunities. While we cannot quantify the increase in export-awareness, we nonetheless believe it to be a real and increasingly positive influence on U.S. exports. We also believe that gains in export awareness are at least partly attributable to the trade promotion efforts of ITA and other U.S. Government agencies.

Increase of Manufactured, High Tech Exports

QUESTION:

It is not very good if we've regressed to a colonial trading relationship with Europe and Asia--we send them raw materials and they send us back Hondas and VCR's. So how much of this increase in exports is for manufactured goods and high technology--versus--agricultural products, wood, and other commodities?

ANSWER:

Total U.S. merchandise exports have increased sharply in recent years, 73 percent since 1986. The largest component of our sales abroad is manufactured goods, and this component grew 76 percent (or $136 billion) between 1986 and 1990. Exports of aircraft, computers, electronic components, and telecommunications equipment all more than doubled during this five year period. Exports of advanced technology products have grown 21 percent since 1988, the first year these data were collected.

U.S. sales of agricultural products increased a sharp 50 percent during 1986-1990. However, this amounted to only a $13 billion increase since, in size, the world market for U.S. agricultural products is less than one-fifth that of the market for U.S. manufactured goods ($40 billion versus $316 billion in 1990).

Impact of ITA's Export Promotion Programs

QUESTION:

Your budget requests $10.6 million more for the International Trade Administration. How do you measure ITA's effectiveness? How much of a difference do ITA's export promotion programs make in increasing exports in comparison with another 1 percent of devaluation of the U.S. dollar?

ANSWER:

Analytical obstacles make it impossible for us to specify the export-generating effect of a 1 percent decline in the dollar. Thus, we cannot begin to provide a precise, unequivocal, answer to the question.

Our best judgment, however, is that the trade effects of a 1 percent decline in the dollar's exchange value are probably very small, and possibly negligible. The historical record shows that currency depreciation has to be fairly substantial, sustained, and broadly based to alter significantly a nation's trade flows. Even then, trade effects tend to materialize with a lag. The sharp slide in the dollar during 1985-87 did not really make itself felt on U.S. trade until 1988.

Thus, an argument can be made--although admittedly not proved--that modest increases in export promotion can be as effective in boosting U.S. exports as a 1 percent depreciation of the dollar. Indeed, export promotion is increasingly important, since current economic fundamentals make it unlikely that there will soon be another major decline in the dollar on the order of the 1985-87 episode. Enhanced export promotion can be particularly effective if U.S. business continues to improve product quality and sustains progress on other facets of competitiveness unrelated to the dollar exchange rate.

ITA has worked with the General Accounting Office over the last several years as they have attempted to arrive at an analysis of our effectiveness at Congress' request, and we have tried to provide information to come up with some basis of measurement. Last year, GAO issued a report that said, in essence, that ITA was probably spending too much time trying to measure our success.

In fact, the GAO felt we should devote more time simply carrying out the programs for which ITA has responsibility.

However, ITA continually reexamines how we might better serve the needs of U.S. businesses seeking help in their export efforts. That is why the Department has launched a national export initiative, to bring the export message to businesses in several dozen cities across the U.S., and make those businesses aware of the services ITA and all of the Federal Government has to offer.

Uruguay Round/Dumping

QUESTION:

Negotiations in Geneva are beginning again on the Uruguay Round of the Multilateral Trade Negotiations. The U.S. has put proposals on the table that would strengthen international rules on unfair trade practices such as foreigners dumping goods in our market and subsidizing exports.

1. First, let me urge you and Assistant Secretary Garfinkel, who is a key U.S. participant in this negotiation, to maintain this position and not agree to any trade-offs that would weaken any aspect of our trade laws.
2. Many of our Asian trading partners are proposing changes in the Antidumping Code that, if implemented, would weaken U.S. dumping law. What is the Administration's position on these proposals which would result in a weaker U.S. dumping statute?

ANSWER:

The Administration's objective is to strengthen, not weaken, the rules and remedies provided by the GATT Antidumping Code. For example, we have advanced proposals to heighten the Code's requirements on transparency and due process in antidumping proceedings. These proposals have received a significant degree of support and, if adopted, they would offer U.S. exporters more assurance of protection from arbitrary dumping findings by other governments. We also have pressed for better rules to deal with circumvention, diversionary and repeat dumping practices. These proposals, unfortunately, have been less widely accepted, but we have not abandoned our efforts.

In any event, while these objectives remain important to us, the United States will never "trade" its proposals for other amendments which would weaken the Code and, by extension, U.S. law. We have vigorously opposed proposals tabled by some of our trading partners which would fundamentally alter the methodologies by which dumping and injury are determined, or would undermine the integrity or accessibility of antidumping measures. We will continue to oppose these and any other efforts to weaken either the Code or U.S. law.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

Public Telecommunications Facilities Program

QUESTION:

The Fiscal Year 1992 President's Budget again proposes to eliminate the Public Telecommunications Facilities Construction Grant Program. The appropriation for this program in FY 1991 was $21.8 million. Please provide for the record the prospective grants in West Virginia that would be affected by the elimination of this program. Include in this information the stage that each prospective West Virginia project is in and the expected completion date of each project.

ANSWER:

Four applications from the state of West Virginia are currently pending before the Public Telecommunications Facilities Program for fiscal year 1991 funding. These projects are among 277 applications competing for PTFP funds. PTFP announces funding decisions in the fall and will obligate all FY 1991 appropriations to the successful FY 1991 applications. On an average there are 125 grants awarded each year and they extend for a period of one to two years.

If any applications are not funded in FY 1991, they will be deferred until the next grant round of the following year if funds are appropriated.

Below is a narrative list of the FY 1991 applications from West Virginia that are in the initial stages of review by PTFP:

West Virginia Educ. Brdcstg. Authority (91803), Beckley, WV. Requests $276,778 to improve the service of WSWP-TV by replacing production equipment.

Alderson Broaddus College (91191) , Philippi, WV. Requests $86,356 to extend the service of WQAB-FM by replacing the transmitter tower and related equipment.

West Virginia Univ. Research Corp. (91256), Morgantown, WV. Requests $27,174 to plan for the establishment of a satellite uplink facility and the integration of the uplink into a campus-wide telecommunications network.

James Rumsey Voc. Tech. Center (91276), Martinsburg, WV. Requests $674,294 to establish a consortium for teaching vocational and technical skills throughout the state via interactive satellite telecommunications.

National Weather Service

QUESTION:

Please provide for the record a table showing the location, staffing, funding, and hours of operation of the Weather Service offices in West Virginia for FY 1992 and 1993, as well as projected data for 1994. Please provide for the record a table showing the Weather Service status in West Virginia, the number of employees, the hours of operations, and the annual economic impact. What are the long-range plans for the Weather Service in West Virginia and Nationwide? What assurance and guarantees are there that communities will not suffer degradation of services? What is the effect of the long-range plan on Weather Service employment levels in each of the West Virginia Weather Service offices?

ANSWER:

The NWS currently has four offices in the state of West Virginia. Current operations and future plans are shown below (dollars in thousands):

		Operating Level		
Location	Staff	FY 1992	FY 1993	FY 1994
Charleston	25	1,482	1,482	1,482
Beckley	7	375	375	375
Elkins	4	204	204	204
Huntington	8	411	411	411

Beckley, Huntington, and Charleston operate 24 hours daily while Elkins operates 16 hours daily. We have no estimate of the annual economic impact of weather services on the State of West Virginia.

The NWS is in transition to a modernized field service. In the future, the offices at Elkins, Beckley and Huntington will be phased down, as described in the National Implementation Plan. This will occur when modernized weather forecast offices assume responsibility for the provision of existing services.

Public Law 100-685 imposes a certification requirement to ensure that operations are not degraded as a result of the transition and requires annual notification to Congress of all NWS modernization activities.

Increase of Coal Production

QUESTION:

For the last two years, at my request, the Committee has included language in the reports accompanying the FY 1990 and FY 1991 Commerce, Justice, State Appropriation bills, expressing its concern that the United States may be disadvantaged in the international marketplace, as a result of practices in other nations mainly involving subsidies. The Committee remains concerned about the type and level of subsidies or incentives provided by other nations to promote and facilitate the export of coal.

In response to my questions from last year's hearing, the Committee was informed that Part II of the Foreign Coal Subsidies Study that was requested by Congress was scheduled to be completed by April 1990. This part of the report addresses two questions: (1) what would be the impact on the international coal trade if the European Community eliminated all coal subsidies; and, (2) what would be the potential for increases in U.S. coal exports, if all European Community subsidies were abolished. This report, which was delivered to the Committee on March 4, 1991, estimated that if all government assistance to hard coal industries were eliminated in 10 market based economies, a potential exists for an incremental increase in international coal trade of 116 million metric tons by the year 2000. This incremental increase represents a 65 percent increase over actual 1988 coal imports by the 10 countries in this study. These countries are Belgium, France, Japan, Korea, Philippines, Portugal, Spain, Taiwan, United Kingdom, and West Germany. Based on historical estimates of United States coal production, is the United States coal industry prepared to increase production to meet this need by the year 2000. Could the coal that is mined in West Virginia be affected by this market increase? Under what circumstances and to what degree?

ANSWER:

U.S. coal production for 1990 reached a record high of approximately 941 million metric tons. 1980 production was approximately 753 million metric tons. The United States coal industry has proven itself capable of expanding production quickly to meet demand. There is little doubt the industry could expand production to meet projected export demand. However, coal production is only one side of the export equation; the coal must also be transported to the customer. Current estimates indicate excess U.S. coal port capacity to exceed 120 million metric tons per year, without additional port developments.

The extent to which the potential increase in demand is met by U.S. suppliers, including West Virginia coal producers, will be dependent on several factors, including quality, reliability, security of supply, and of course, price competitiveness vis a vis other coal exporting countries. The delivered price is affected by exchange rates, inflation rates, fuel costs, transport costs, and labor wages and practices.

In general, U.S. coal is price competitive at the mine mouth with our major competitors, with the exception of South Africa. Two other primary factors related to competitiveness are transportation costs, including inland transportation costs and ocean freight, and relative exchange rates vis a vis our international competitors. Both of these major competitiveness factors are beyond the control of U.S. coal producers.

Phasing Out of Foreign Coal Subsidies

QUESTION:

The International Trade Administration, in coordinated actions with the Office of the United States Trade Representative and the Department of State, seeks through bilateral consultations and multilateral forums to have coal production and export subsidies phased out. Will the phasing out of these coal subsidies be attainable by the year 2000? Please provide for the record an updated fact sheet on the progress of coordinated efforts by the International Trade Administrations in eliminating the coal subsidies and stimulating U.S. exports of coal to the European Community countries.

ANSWER:

The primary vehicle for seeking the removal of subsidies to the EC coal industry is the GATT negotiations. The Uruguay Round of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) was scheduled to conclude this past December.

However, the inability of the European Community, Japan, and Korea to commit to substantive reform of their agricultural policies led to a breakdown in the negotiations as a whole in December 1990.

On March 1, President Bush asked Congress for an extension of fast-track negotiating authority for the Uruguay Round.

On February 26, 1991, the GATT Uruguay Round negotiations were formally resumed. A new plan provides a basis for restarting the negotiations in all areas in which differences remain outstanding and proposes a work agenda in each of the negotiating areas.

The new structure for continuing the negotiations does not refer to committees or negotiating groups but rather to seven consultations organized on an issue-specific basis and modeled on the structure used at the Brussels Ministerial meeting.

Coal subsidy discipline is an issue the U.S. negotiators would prefer to address in the Subsidies and Countervailing Measures Group under the GATT Rules negotiations. Other negotiating groups, such as the Natural Resource-Based Products Group, are not seen as having sufficient authority to enforce negotiated agreements.

Negotiators in the GATT Rules, Subsidies and Countervailing Measures Group, charged with developing new GATT rules on subsidies and countervailing measures remain divided on a number of fundamental issues. Despite extensive discussions, these issues were not resolved by the close of the Brussels Ministerial in December 1990. Although the Uruguay Round subsidy negotiations are not designed to take up sector-specific issues, it is the U.S. expectation that any generic disciplines that may be negotiated would apply equally to the coal sector.

The Natural Resource-Based Products Negotiating Group (NRPB) was formed with the broad mandate to remove barriers to trade in natural resource-based product areas such as nonferrous metals, fish and wood. However, during the course of the negotiations, participants could not reach agreement on the product coverage of the Group or on the role of the Group in relation to other Uruguay Round negotiations. In fact, the Group has served primarily as a discussion forum and as a monitor of the progress of other negotiating groups which are more actively negotiating natural resource-based product concerns.

U.S. negotiators also supported, in principle, a proposal in the Natural Resource Based Products Group (NRPB) that would have addressed coal subsidies in the EC. The U.S. negotiators were wary of addressing the issue here because of demands that would be placed on the U.S. to give concessions in other NRPB areas. This was before the breakdown in negotiations in December, 1990. Without any agreement within the GATT it appears unlikely that the EC countries will eliminate coal subsidies entirely by the year 2000.

Charleston, West Virginia District Office

QUESTION:

Last year, at my request, the Committee again included language in the report accompanying the FY 1991 Commerce, Justice, State Appropriation bill, directing that the Charleston, West Virginia International Trade Administration office remain in operation at current levels. May I have your assurances that this office will remain open at the current level in FY 1992? Please provide for the record, the staffing and funding levels of the office for the fiscal years 1991, 1992, and the projected for 1993.

ANSWER:

We plan to maintain the FY 1991 staffing and funding levels of the Charleston, West Virginia District Office, approximately $160,000 and four positions, through FY 92. We are unable to project into FY 1993 since the Department has not yet initiated the relevant budget process.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

Public Telecommunications Facilities Program

QUESTION:

Your budget request would zero-fund the Public Telecommunications Facilities Planning and Construction Program (PTFP grants) administered by the National Telecommunications and Information Administration (NTIA), despite our funding PTFP grants last year in the amount of nearly $22 million. In many states, especially rural states like Arkansas, access to radio and television signals is very limited. Right now, at least two applications from Arkansas stations are pending before the NTIA for PTFP grants to bring public broadcasting to remote areas where it simply has not reached before and replace obsolete equipment.

Why are you targeting this absolutely worthwhile program?

ANSWER:

The Public Telecommunications Facilities Program has provided over $385 million in grants over the last 29 years. During this time substantial contributions have been made to ensure that the vast majority of Americans receive a public TV or radio signal.

While we agree that the goals of the Program are admirable, the Federal deficit and the presence of higher priority programs dictate that the funding of such efforts fall within the purview of the localities involved.

QUESTION:

In view of the increasingly large role telecommunications play in our lives, shouldn't public broadcasting be allowed to keep pace?

ANSWER:

The Public Telecommunications Facilities Program has helped to establish a first rate infrastructure for public broadcasting. Public broadcasters have access to state of the art equipment and are able to transmit quality signals.

The Department of Commerce believes that public broadcasting stations must develop long range plans to provide for the replacement of this equipment. Public broadcasters have enough mechanisms available to provide for future replacements and should not rely on PTFP for partial funding of their equipment replacement. In recent years, the majority of PTFP funding has been for the replacement of public broadcasting equipment. With proper planning, public broadcasters should be able to keep pace with the advancements in the telecommunications industry without help from PTFP.

QUESTION:

Shouldn't we ensure that every American has access to public broadcasting?

ANSWER:

The Public Telecommunications Facilities Program has had significant success in ensuring that public broadcasting is extended to every U.S. citizen. PTFP has contributed to bringing public broadcasting services to approximately 96.5% of the population (over 94% receives television coverage and over 86% receives radio broadcasts). An additional 1% of the population receives public television via cable.

PTFP can only act as a catalyst in bringing a first public broadcasting signal to unserved communities. For an organization to establish and maintain a public broadcasting service in a community, it must have the support of the community's citizens.

The establishment of a public television station is a costly endeavor given today's technology. A television station can cost anywhere from $750,000 to $2 million in hardware expenses, and the operation of a station can run up to a million dollars annually. Even the establishment of low-power television station or translator that rebroadcasts another signal can be an expensive proposition. In the smaller unserved communities, it is not often feasible for the community to support a public television service.

It is also difficult to reach unserved markets with public radio. In addition to the costs of securing and maintaining a public radio service, other factors must be considered. Certain areas not covered with a public radio signal are often difficult to reach because of the very rugged, mountainous terrain of that region. Also, interference with other broadcasting signals and reserved FM frequencies can preclude the Federal Communications Commission from granting authorization to a public broadcasting entity for a radio frequency.

Community support, costs of the service, and other factors contribute to the likelihood that public broadcasting will not reach every community. In fact, PTFP has been experiencing a decrease in the request for funds to extend public broadcasting to unserved communities. The Department of Commerce feels that PTFP has made every effort to ensure that all Americans have access to a public broadcasting signal.

Future Census Counts

QUESTION:

The budget request you have submitted calls for a sharp decrease of more than $75 million in spending for the Bureau of the Census. That is expected in view of the decennial nature of the Bureau's peak activities. However, your request calls for an increase of 149 permanent positions, all in the area of economic statistics, with no increase in positions concerned with demographic statistics. In view of the complaints there have been regarding alleged inaccuracies in the Census, why have no additions been requested for personnel concerned with demographics, and what remedial efforts are under way to avoid inaccuracies in future Census counts?

ANSWER:

We have requested an increase of 149 permanent positions in the current economic statistics activity of the salaries and expenses appropriation. Most of these current economic statistics increases implement the Economic Statistics Initiative.

However, we have also requested an increase of 164 permanent positions in the 2000 decennial census subactivity of the demographic statistics activity of the periodic censuses and programs appropriation.

The Department of Commerce has recently established a Task Force for Planning the Year 2000 Census and Census-Related Activities for 2000-2009. The goal of the Task Force is to provide recommendations for alternative ways to ensure an accurate Year 2000 Census at minimum cost. The program increase which we have requested will examine response to a much shorter questionnaire; the cost and effectiveness of using administrative records; explore innovative techniques for collecting and processing large volumes of data; develop alternatives to increase respondent cooperation in hard-to-enumerate areas; and explore the best ways to maintain the list of residential addresses and TIGER mapping data base, which were major investments for the 1990 Census, for use in the 2000 Decennial Census and other censuses and surveys.

QUESTION:

For the tenth year in a row, your Department has sought to eliminate funding for the Economic Development Administration and for the tenth year in a row, I expect that we will restore that funding. Last year I asked you why, in view of the strong and sustained support for this program, you persisted in trying to kill this program instead of working with us to preserve it in an acceptable form. I'd like to hear your answer to that question again and ask you if you see some other affirmative means of achieving the very worthy goals of the Economic Development Administration?

ANSWER:

The Administration continues to believe that the Economic Development Administration's goals "to alleviate conditions of substantial and persistent unemployment and underemployment in economically-depressed areas and regions" can be more appropriately and effectively addressed at the state and local levels. The FY 1992 Budget contains numerous proposals aimed at increasing local flexibility by moving decisionmaking closer to the people it affects. One such proposal designed specifically to revitalize economically-depressed communities is the Administration's Enterprise Zones proposal. The proposal has tax incentives to create jobs and stimulate entrepreneurial activity in both urban and rural areas. In addition: 1) continuous economic development is contingent upon fiscal stability which can result from a reduced federal deficit; and 2) the elimination of EDA will save taxpayers an estimated $1.18 billion through 1996, the last year of the proposed phaseout.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

Patent Harmonization

QUESTION:

Please provide an update on the status of the U.S. participation in WIPO sponsored treaty negotiations on the harmonization of patent laws.

ANSWER:

The United States will seek to conclude the Treaty supplementing the Paris Convention as far as Patents are concerned (Patent Law Harmonization Treaty) at a diplomatic conference scheduled from June 3-28 in The Hague, Netherlands. The United States Government has recently proposed a modification to the controversial article in the treaty which requires a country to award patents to the first person to file a patent application for a given invention. According to our proposal, a country would have the option to have either a first-to-file system, as presently mandated by the treaty, or in the alternative, to have a first-to-invent system similar to that used by the United States today. This proposed amendment, if accepted, would allow the United States to choose which of the two systems it considers to be better and not be forced to accept a first-to-file regime on the basis of the Patent Law Harmonization Treaty. A treaty which includes this proposed amendment together with the other desirable articles found in the draft treaty would present a very acceptable package for the United States.

QUESTION:

Under what conditions, if any, would the Administration be prepared to accept a treaty that would require the U.S. to change its "first-to-invent" practice to a "first-to-file"?

ANSWER:

The Administration would be prepared to accept a treaty requiring the United States to change to a first-to-file system if it determined, that on balance, the treaty, including first-to-file, would benefit the United States, that treaty adherence could receive Senate advice and consent and implementing legislation could be enacted.

QUESTION:

If the Administration is prepared to accept changes in U.S. policy only if it secures in return substantial improvements in foreign patent systems what improvements does the Administration have in mind?

ANSWER:

The Administration would not condition its willingness to accept changes in the U.S. patent system on substantial improvements being made in foreign systems. We anticipate that changes in the U.S. system will be forthcoming as a result of the deliberations and recommendations which will flow from the Advisory Commission on Patent Law Reform which I established to look at the overall functioning of the patent system.

However, with respect to the types of changes which the United States would like to see mandated by the Patent Law Harmonization Treaty, I might mention the following: elimination of pre-grant opposition; providing a reasonable breadth of protection in the interpretation of patent claims; the imposition of reasonably prompt time limits to complete the patent granting process; a reasonable minimum patent term such as 20 years from the date an application is filed; the requirement that patents be granted for all products and processes in all fields of technology which would include items now commonly excluded by developing countries such as pharmaceutical and chemical products; and, extending the coverage of a process patent to the resulting product along with a requirement placing the burden on an accused infringer to show that he did not use the patented process in the production of a similar product.

QUESTION:

Does the Administration agree that American innovators face significant problems as a result of inadequacies of foreign patent systems including:

- long delays in processing patent applications
- denial of patent protection of a scope commensurate with the contribution of the invention (e.g., absence of a doctrine of equivalence, and absence of patents of broad scope for pioneering inventions)
- cumbersome and inefficient pre-issuance opposition practice, and
- inadequate enforcement mechanisms

Does the Administration believe that it can secure improvements in these areas in the patent harmonization talks?

ANSWER:

Yes. Considerable agreement has already been reached in the Patent Law Harmonization Treaty negotiations on the elimination of pre-issuance oppositions and on the adoption of an article outlining the requirements for a reasonable scope of claim interpretation including a doctrine of equivalents. In addition, provisions on the delays in processing and on enforcement mechanisms are under negotiation as mentioned in the answer to the previous question. We are confident that a number of these improvements can be achieved as a result of the Patent Law Harmonization Treaty negotiations.

QUESTION:

Please provide the Administration's view of the inadequacies of the Japanese patent system and the status of its efforts to secure positive changes.

ANSWER:

From the perspective of a United States inventor, the Japanese patent system operates in a manner that effectively denies inventors of important inventions a reasonable period of exclusive rights in Japan. The process for examination of patent applications in Japan is seriously backlogged. Then, when a patent application is finally determined to be in condition for allowance, it is subject to an opposition which can further delay the process and provide the means for Japanese competitors to harass American inventors. Resolution of an opposition proceeding can also involve lengthy court appeals which can further delay ultimate patent issuance. Once the patent issues litigation to stop patent infringement, it can again be subject to lengthy delays which can frustrate the patent owner's ability to exclude infringing competitors from his market.

Although the Japanese Patent Office has increased its staff marginally, the impact on the time for processing applications in the office will not be appreciably affected for many years. Moreover, without the impetus of a Patent Law Harmonization Treaty to forge other changes in the Japanese patent system, many of the other deficiencies noted above will continue.

QUESTION:

Please describe how the Administration is coordinating its efforts in the TRIPS talks within the GATT round and the patent law harmonization talks under the auspices of WIPO.

ANSWER:

The Commissioner of Patents and Trademarks coordinates with the United States Trade Representative on important overlapping policy issues in the two sets of negotiations Further, the Patent and Trademark Office negotiators for the Patent Law Harmonization Treaty also participate in the negotiations on the TRIPS talks and ensure that all policy issues are thoroughly discussed and fully coordinated within the two sets of negotiations. The coordination and cooperation has been exemplary between the two agencies.

QUESTION:

Please provide an analysis of the shortcomings of Mexican intellectual property law and its administration of an effective and adequate system to protect intellectual property.

ANSWER:

The present Mexican intellectual property law suffers from a number of shortcomings. These include, among others, a very short patent term, the unavailability of patent protection for inventions in many technologies, certain restraints on the rights of trademark owners to use their trademarks, a lack of trade secret protection as such, inadequate protection for sound recordings and computer software, and certain enforcement impediments.

Our concerns about these deficiencies have been the subject of discussions with the Mexicans over the past several years and as recently as earlier this month. The Mexicans are attempting to address these shortcomings with legislation now under consideration and with legislation promised for the very near future. The legislation now under consideration will give Mexicans a basis for a relatively modern industrial property (patent, trademark, industrial design and trade secret) regime. The Mexicans have promised a revision of their copyright law to also modernize it and address the major copyright deficiencies noted above.

Intellectual Property

QUESTION:

Weak protection of intellectual property rights is a major disincentive to trade for U.S. companies. Assisting developing countries with a development of strong patent, trademark and copyright laws serves both the U.S. and the developing countries interest.

Does the U.S. Patent and Trademark Office or the AID provide any assistance to developing countries concerning the improvement of intellectual property rights?

ANSWER:

The U.S. Patent and Trademark Office (PTO) provides assistance to developing countries both by training developing countries' nationals in the United States as well as by sending experts to work with developing country officials on-site. For the past several years the PTO has been conducting two training courses annually for approximately 12-15 nationals from developing countries. The courses focus on patent and trademark law and how to administer an industrial property office. Participants in these courses, however, must fund their travel to the United States and their subsistence costs while in the United States to attend these courses. The PTO makes available the class room, instruction materials, and instructors.

With respect to expert training outside the United States, the PTO has sent and has arranged to send numerous experts both from the government and the private sector to work with officials in developing countries. Again, however, due to financial constraints, these experts are normally made available to developing countries only when funds can be obtained to cover their costs from the World Intellectual Property Organization (WIPO), the United Nations Development Programme (UNDP), or some other source of outside funding.

QUESTION:

With respect to the U.S.-Mexico free trade agreement and the problems of enforcing intellectual property rights in Mexico--what is the Department of Commerce doing, to secure better protection of U.S. intellectual property in Mexico?

ANSWER:

Bilateral discussions over the past several years have focused on the problem of enforcing intellectual property rights in Mexico. Mexican officials have indicated that most of these deficiencies in the present Mexican intellectual property regime, some of which are noted above, will be addressed in the next several months. To the extent that there are any remaining problems in the enforcement of U.S. intellectual property rights in Mexico at the time North American Free Trade Agreement (NAFTA) negotiations begin with Mexico and Canada, those problems will be pursued and resolved as a part of the NAFTA negotiations.

International Standard Setting

QUESTION:

In 1989, P.L. 100-159, section 112 directed the Department of Commerce to establish a pilot program to assist countries in the development of domestic product standards. Such assistance ensures that countries do not develop standards that serve as barriers to U.S. goods and services.

Please describe and evaluate the current status of the program and its practical outcome in the Saudi Arabian pilot project.

ANSWER:

Under the NIST Standards Assistance Program a pilot project in Saudi Arabia was established approximately one year ago. Through cooperation with the U.S./Saudi Arabia Roundtable and voluntary contributions from the private sector, Mr. Gilbert Tupper was assigned as a U.S. standards expert to work with the U.S. Embassy in Riyadh in support of standards development activities at the Saudi Arabia Standards Organization (SASO). Mr. Tupper has just completed his assignment and is about to be replaced by Mr. Edward Wunder. Both Messrs. Tupper and Wunder have had extensive experience in standards work and in working with SASO and other Saudi Arabian officials.

The NIST project, using existing resources, provided support in the United States serving as a focal point for the receipt of draft SASO standards services solicited technical inputs from U.S. government and private sector experts. In total, 116 comments and other technical advice were provided in response to 221 requests. All U.S. suggestions to date have been accepted by SASO. The private sector partners in this program have provided wholehearted support and have expressed great satisfaction with the results and have written a report of the first year's experience.

QUESTION:

Are there other countries that have asked for U.S. assistance in developing standards?

ANSWER:

In past years, we have received a number of requests for U.S. standards support from many parts of the world, and have been able to offer short-term (1 to 2 weeks) support on an ad hoc basis.

QUESTION:

Do you think it is a good idea for the Department of Commerce to assist developing countries in their standard setting activities?

ANSWER:

The Department fully subscribes to the concept of standards assistance as a means of fostering trade and improving our economy.

QUESTION:

Are you aware of the fact that U.S. competitors like Japan and Germany have made huge efforts to introduce their standards in developing countries, thereby, excluding American products that do not meet these standards?

How does the Department of Commerce respond to these developments?

ANSWER:

We are aware that U.S. competitors have extended their efforts to aid developing countries. However, our experience with SASO suggests that U.S. standards and technology have a great appeal. Moreover, whereas other countries have sent individual specialists, the U.S. concept of a generalist funneling issues back to the United States for analysis and response has been particularly successful and is now being copied by other countries.

Standards Setting in the EC

QUESTION:

The standard issue is also important concerning market access to the European Community. Under the EC's new approach, European standards are going to be centralized and put under the authority of CEN/CENELEC - the European standard setting organization.

What are the latest developments in gaining access to these standard setting bodies?

ANSWER:

With respect to EC standards and conformity assessment activities, there has been little progress on the

European side. A "green paper" has been formally presented and may soon be considered for adoption; the Department is submitting comments. CEN and CENELEC have indicated that they will rely, when possible, on international standards rather than developing their own. It must be noted that we have no direct access to the deliberations and decisions of these European organizations. Hence, we continue to strive to influence the development and adoption of international standards, as well as to provide indirect and informal inputs to the regional organizations.

QUESTION:

Testing and certification have also been a matter of concern to U.S. businesses. Please give a short review on the progress that has been made in solving the different U.S. and EC approaches towards testing and certification.

ANSWER:

NIST supports and encourages mutual recognition of laboratory accreditation and mutual recognition of conformance tests. However, until the EC recognizes the programs of non-EC countries and supporting infrastructure is in place in the U.S., the only option is negotiated, bilateral recognition arrangements. This mode of operation is likely to continue beyond 1992.

To date the Europeans have not yet established their full set of conformity assessment mechanisms. Formal "notified bodies" have been established only within Europe, without provisions for non-EC countries. Since conformity assessment depends heavily on government-to-government agreements, NIST has inaugurated a series of workshops to obtain the views of various industry sectors for defining issues, needs, and appropriate courses of government action. We are seeking to develop a governmental focal point to assist U.S. industry in ensuring product acceptance abroad through testing and conformity assessment procedures conducted within the United States.

QUESTION:

The senate report accompanying the FY 91 Commerce Appropriations bill urges the Department of Commerce to issue a report on environmental costs required under section 6 of Public Law 92-500, the Federal Water Pollution Control Act of 1972. That law directs the Secretary to make the first report to the President and Congress not later than October 1972, and after that, at least every 12 months. However, the last such report was issued in 1975.

The report language urges the Commerce Department to prepare such a report and issue it to Congress within 6 months of passage of the bill, and to continue to prepare such a report every year thereafter.

There are concerns about the disparity between American and Mexican pollution abatement costs and how that could affect trade under a Free Trade Agreement with Mexico. In light of those concerns, the Department's report would be very helpful.

What is the status of this report? What progress has the Department made in preparing the report so it can be submitted to congress within the deadline?

Will the Department of Commerce submit this report to Congress within 6 months of passage of the FY 91 Appropriations bill?

ANSWER:

Required data/information needed to produce the report on environmental costs required under section 6 of Public Law 92-500, the Federal Water Pollution Control Act of 1972, is being gathered. We have found it is difficult and time consuming to research the required data and associated information, but are making a strong effort.

We do not expect to be able to produce the report within the six months time-frame requested in the Senate Report accompanying the FY 1991 Commerce Appropriations Bill, however an intra-departmental taskforce led by the International Trade Administration will attempt to have the report ready by the end of this calendar year.

QUESTIONS SUBMITTED BY SENATOR BROCK ADAMS

QUESTION:

As stated in the 11/16/90 Memorandum of Disapproval accompanying the veto message on the Export Administration Amendments Act, the President set forth a timetable for achieving certain export control reforms. These include creation of a CoCom license-free zone and removal from the U.S. munitions list of all items on the CoCom dual-use list by June 1, 1991. Will the Administration meet the June 1 deadline on the license-free zone and the munitions list? Is the State Department working with Commerce to determine which items on the munitions list might "jeopardize significant national security interest?"

ANSWER:

A COCOM license-free zone has already been established through the implementation of General License GCT. However, there is a small exclusion list of items for which a validated license is still required for COCOM countries. Foreign policy controls also limit, in some cases, the use of GCT.

COCOM has established a target date of April 30, 1991 for implementation of Common Standard Level of Effective Protection (CSP). Once all members effectively control items consistent with the CSP the rationale for maintaining the list of exclusions for national security reasons will disappear. The Administration is committed to the license-free zone by the June 1 deadline.

The State Department is working with Commerce to determine which items on the munitions list might "jeopardize significant national security interests" and we expect to have our work completed by June 1, 1991.

QUESTION:

When does the Administration realistically expect to complete the "Core List," which was originally due for completion at the end of 1990?

ANSWER:

Agreement was reached in COCOM in February of this year on the major issues in most categories. For those issues requiring additional review, time has been provided for additional multilateral discussions to take place before final agreement is reached on all issues at the High Level Meeting tentatively scheduled for May 2-3. Although COCOM has not set an implementation date, we anticipate that the Export Administration Regulations will reflect the Core List provisions by early July.

QUESTION:

The Conference Report on the EAAA that was pocket-vetoed by the President last November stated that "Certain cryptographic products and categories of cryptographic products that were controlled under the authority of the AECA have been removed to the jurisdiction of the EAA. There is no intent to use the authority of this provision [re: commodity jurisdiction] to place these products back under the jurisdiction of the AECA." On which CoCom list (munitions or industrial), if any, are the items that were removed from the AECA?

ANSWER:

There have been a number of cryptographic items transferred in the past two years from control under the USML to the CCL. However, there are a number of commercial items still covered by the USML.

All of these items as well as other cryptographic products are covered by both the COCOM Industrial and Munitions Lists. In the Industrial List, they are covered principally by item IL 1527, but also described by items IL 1565, 1566 and 1567. In the Munitions List, they are covered by ML11. There are considerable overlaps in coverage of cryptographic products among the two lists.

QUESTION:

Are all cryptographic products or categories of cryptographic products subject to U.S. export controls under the EAA and the AECA listed on one of the CoCom lists? If not, when did the Administration propose to CoCom that the items be placed on a CoCom list? Do all other countries that manufacture cryptographic items of comparable quality and in significant quantities impose controls equivalent to those of the U.S. on the items?

ANSWER:

Yes, all cryptographic products subject to U.S. controls under the EAA and the AECA are controlled by COCOM under IL 1527 of the Industrial List and ML11 of the COCOM Munitions List. These controls have been in place for many years.

The question on how other governments control cryptographic products is currently under study. At the present time, most countries do not have comparable products.

A special situation somewhat unique for U.S. industry because the U.S. Government has developed and adopted the Data Encryption Standard (DES), an encryption algorithm, as a standard. DES has been implemented widely in commercial products. DES is used in automatic teller machines, smart cards, mass market software, financial communication controllers, etc. Another widely used encryption algorithm in the U.S. is RSA. It is also widely used in commercial products and is rapidly becoming a de facto industry standard. There are no equivalent efforts by foreign governments.

QUESTION:

A number of software programs are widely available in world markets, making them a "commodity" product. In previous foreign availability cases, the fact that an item is a "commodity" product and that its trade between countries is virtually impossible to control have led to decontrol on the basis of foreign availability. Does the Department have any plans to self-initiate a foreign availability case on widely available software programs that include commercial encryption? How does the Department distinguish between those software programs that contain encryption for routine office use (e.g., passwords or personal identification codes) and those which would truly contribute to the military capability of our adversaries?

ANSWER:

At the present time the Department does not have any plans to self-initiate a foreign availability case on widely available software programs that include commercial encryption. The Department makes a priority of acting on industry initiated assessments, and these assessments generally consume most, if not all, of the Department's foreign availability resources.

The concerns raised by certain encryption algorithms are intrinsic to the algorithm, and not the end use. However, the Department continues to seek to define benign end uses for encryption algorithms and liberalize export controls accordingly.

Foreign Trade Zones Regulations

QUESTION:

With the designation of the Yakima (Washington) Air Terminal as a Customs User Fee Airport in January of this year, the Kittitas-Yakima Economic Development Council is interested in establishing a Foreign Trade Zone (FTZ). The Commerce Department has been revising the regulations for FTZs, and it is unclear how the revised regulations might affect new FTZ applicants.

Please describe the status of the Department's work in revising the regulations, the criteria the Department considers most important for the approval of an FTZ application, and any other conditions that may be relevant to a group, such as the Kittitas-Yakima Economic Development Council, which is considering applying for FTZ status.

ANSWER:

We are currently reviewing the final comments we received in response to our second Federal Register notice on the proposed regulations, and we expect to publish the final new rules in July 1991.

The basic criteria the FTZ Board applies in reviewing applications to establish new general-purpose zones is whether there is a need for zone services in the community (economic justification), taking into account projected as well as existing international trade activity, and the adequacy of the plan for providing zone services. The authorization of activity within zones is a separate matter. Manufacturing activity is subject to a public interest assessment on a case-by-case basis, which includes consideration of trade policy and economic factors.

Applicants should be mindful that the new regulations do not change the criteria or procedure for authorizing new general-purpose zones. The new regulations provide more details on procedures and factors considered by the FTZ Board in reviewing manufacturing activity within zones. The proposed regulations also establish a timetable for the completion of cases within a specified period. The new regulations also propose application filing fees to conform with the cost recovery requirements of 31 U.S.C. 9701.

With Customs User Fee Airport status, the Yakima, Washington, area is eligible to apply for a foreign-trade zone under existing FTZ Board regulations (15 CFR Part 400), and its eligibility will not be affected by the proposed revised regulations.

The Commerce FTZ Staff (377-2862) has been providing technical guidance to Yakima officials, and remains available for further assistance.

Canadian Lumber Import Fraud

QUESTION:

I have been contacted by BMC West Corporation, a Washington building materials supplier with centers in Washington state, seeking assistance with a problem of fraudulent grading of Canadian lumber products imports. According to the company, two small mills in Surrey, B.C. had their lumber upgraded from bad to an acceptable grade. The lumber was used as if it had been correctly graded, creating a hazard in those projects which used the lumber and numerous liability problems.

Is the Commerce Department aware of this problem, and what action is being taken to resolve the problem?

ANSWER:

It appears that two grading stamps were either misappropriated or stolen from two mills in Canada and then applied to substandard lumber which was subsequently shipped to the Northwest United States.

(Note: It is common industry practice for an accredited inspection organization to allow mills to stamp their own lumber. The testing organization then makes periodic, unannounced spot checks to ensure the mark is being administered properly.)

The American Lumber Standards (ALS) Committee, appointed by the Secretary of Commerce, learned of this situation from a U.S. firm and undertook an immediate investigation. Some 2 million board feet of fraudulently stamped lumber was identified and returned to Canada.

This matter is the subject of an ongoing investigation by the Royal Canadian Mounted Police (RCMP) with the active cooperation and assistance of the American Lumber Standards Committee. The responsible parties have not yet been apprehended, but this case is being handled as a high priority by the RCMP.

We feel this one-time fraud has been effectively neutralized, and we are continuing to work with Canadian law enforcement officials to ensure that the responsible parties are brought to justice.

Assistance to Native Americans

QUESTION:

Section 2303 of the OTCA authorized the Commerce Secretary to establish a Market Development Cooperator Program and Section 2307 authorized the Secretary to establish an Indian Tribes Export Promotion program.

Please describe the Department's activities to implement these programs. Has the Department provided any funding to carry out these programs?

ANSWER:

With respect to establishment of the Market Development Cooperator Program, while authorized in Section 2303, Commerce has not been appropriated any funding for the Program.

The Department has several ongoing programs which assist in promoting exports of Native American arts and crafts. ITA's Office of Consumer Goods has actively recruited Native Americans to participate in the Department's export development activities, including trade missions and fairs.

Our US&FCS Branch Office in Santa Fe, New Mexico, has been very much involved in the effort. For example, the office is working with local concerns in developing and promoting Native American crafted products. In conjunction with the State of New Mexico Office of Indian Affairs, the First Nation Program, and the Indian Arts and Crafts Association, the All Indian Pueblo Council of New Mexico, to name a few, our Santa Fe trade specialist coordinated a special promotion campaign to the Native American crafters to advertise in the May 1991 Commercial News USA, American Handcrafts edition.

In May 1990, we conducted an Export Marketing seminar for 36 Native American artists and dealers and coordinated several groups of foreign buyers to visit the 22 New Mexico exhibitors at the Dallas Market Center for the Best of the Southwest exhibition.

In early FY 1991, in cooperation with the New Mexico Trade Division and Japan External Trade Organization (JETRO), Santa Fe hosted a Japanese delegation to meet with local Native American handicrafts producers. To follow-up, two workshops on selling to the Japanese market will be conducted in May 1991, in conjunction with JETRO and the State.

Other offices within the Department that are outside ITA also provide programs which assist Native Americans in areas such as increased promotion of tourism services and funding of business development centers.
While these latter programs aid Native American business development, they are not directly focused on increasing export promotion of Native American arts and crafts.

U.S. Trade Support

QUESTION:

The United States has traditionally lagged far behind our OECD partners in terms of the number of personnel and amount of funding devoted to export promotion programs.

How does the U.S. rank presently in terms of the number of personnel, the amount of funding (both in overall budget and per capita), and the types of activities (e.g., support for trade missions and other promotional activities) devoted to export promotion?

ANSWER:

While it is true that in the past our OECD partners have expended more resources on trade promotion than the U.S., we do not have current data available which indicates the present situation. Based on experiences in 1987, it would take almost one year to produce the complete survey required to obtain the comparative data.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Spectrum Auction

QUESTION:

The President's budget includes bill language to reallocate 30 megahertz of radio spectrum from Federal government control to the private sector. Current private users in other parts of the spectrum would be reassigned to different portions of this 30 megahertz. The spectrum vacated by these users would then be reassigned by the Federal Communications Commission through auctions beginning in fiscal year 1994.

As Secretary of Commerce, you are responsible for the government portion of the telecommunications spectrum through the National Telecommunications and Information Administration. You are requesting $2 million in connection with this proposal.

What private users would be reassigned to the spectrum currently under Federal government control?

ANSWER:

The private users that would be assigned to the 30 MHz of spectrum, currently under Federal Government control, have not been determined and would be determined only after a FCC rule making to determine the service and procedures for subsequent auctions.

Point of Clarification: The National Telecommunications and Information Administration (NTIA) budget request includes a proposal of $2 million for a National Radiocommunications and Spectrum Planning program. In one phase of the proposal, NTIA will develop options for a spectrum redistribution and reallocation plan and coordinate possible frequency allocation changes. NTIA's reallocation plan will not be limited to the 30 MHz included in the legislation.

QUESTION:

Would these private users have a choice in their reassignment?

ANSWER:

The private users would have a choice of assignments depending on the FCC rules that were approved for this band.

QUESTION:

Would auctions involve users in the same class of service, or would the auctions be open to any service, with the winners being that class of service with the most money or most potential return?

ANSWER:

The spectrum transferred from Federal Government users to the FCC would have a designated allocated service or services. The FCC may need to change this allocation, in a rulemaking, to another service or services appropriate to the new requirement that it is desired to accommodate. The new allocation for the band would then determine the services that could be used. The FCC would auction frequency assignments according to the allocation and service rules for this band. It is probable that the auctions would be for one service although the FCC could open this to more than one service if they are compatible.

QUESTION:

What is the estimated return to the Treasury of the auctions, beginning in 1994?

ANSWER:

The return to the treasury is estimated at $800 million in 1994, $1.2 billion in 1995 and $500 million in 1996.

Advanced Technology Program

QUESTION:

In the past two fiscal years, the Subcommittee has provided funding for the Advanced Technology Program of the National Institute of Standards and Technology. Although the Administration originally opposed this initiative, I'm happy to see that you are supporting continued funding for this program at a level of $35.9 million.

On Tuesday you announced the first awards from the program, $9 million for 11 first-year grants. This leaves $36 million in unobligated balances. What are your plans for obligating the remainder of these funds?

ANSWER:

NIST anticipates issuing an RFP for the second competition in April or May, with proposals due in July. Award of about $23 million ($36 million less second year requirements for the first series) would take place in the first quarter of FY 1992.

QUESTION:

In FY 1991 Conference report, we asked for a contingency plan in the event of a loss of geostationary weather satellite coverage. The report was due by February 1, but has not been delivered. What is the status of the report?

ANSWER:

The "Report to Congress" on the GOES program was delivered to the Appropriations Committees on April 19, 1991.

QUESTION:

We understand NASA has recommended that Commerce consider procuring a "gap-filler" weather satellite to protect against the loss of geostationary weather satellite coverage. Do you agree with that recommendation? What would be the cost of this "gap-filler?"

ANSWER:

In view of the NASA recommendation to consider the procurement of a gap-filler spacecraft, NOAA has established a task force, chaired by the Deputy Associate Administrator of NESDIS, to explore all possible options for a gap-filler capability. The task force include members from NESDIS, the NWS and NASA. The task force is considering the technical capability of each option as well as the probable cost and schedule for implementation. Current projections are that all of the options will cost more than $150M and none can be implemented before late 1992.

QUESTION:

Since NASA, is, in effect, the procurement agent for NOAA for weather satellites, should they share in the additional cost that would result if a purchase were made? Aren't they partially responsible for the cost overruns and delays in the geostationary weather satellite procurement?

ANSWER:

Although NASA is the procurement agent for the NOAA weather satellite, NASA does not have the mission to provide operational services. Therefore, they do not budget for cost overruns for the NOAA programs. Traditionally, NASA has funded research and development of weather satellites and has also funded the cost of developing and launching prototype satellites. However, in 1982 they eliminated support of the operational weather satellite activities from their budget. The agreement of record between Commerce and NASA as to the division of responsibilities states that NASA should fund the development of new spacecraft/ instruments for NOAA.

Since GOES I is the first of a new series of GOES spacecraft, it could be argued that NASA should pay for at least part of the cost of the development of the new GOES satellites.

One-Stop Shopping

QUESTION:

In your statement you mention that you chair the Trade Promotion Coordinating Committee, an new interagency effort designed to serve American exporters, and to provide "one-stop shopping" for information on markets, financing, regulations, and related matters.

I think this is a commendable effort. One of the complaints I hear most frequently from potential exporters in New Hampshire is that there is no single location where they can receive information on export opportunities, financing, and other assistance from the variety of Federal agencies involved in trade promotion and regulation. For instance, New Hampshire has a Small Business Administration office in Concord, but the Export Administration office is in Nashua, while the International Trade Administration has no presence in the State at all.

Would it make sense, on a pilot basis, to try to co-locate some of these organizations to provide "one-stop shopping" for potential exporters in selected states?

ANSWER:

New Hampshire is part of the New England region covered by the US&FCS Boston District Office. The trade specialist assigned to New Hampshire conducts an average of 4 visits to New Hampshire a month. That trade specialist services approximately 400 active accounts. During the period February 1990 - February 1991, our office reports having facilitated the entry of at least fourteen companies into new markets.

The Boston District Office coordinates closely with the Bureau of Export Administration regional office in Nashua, NH, jointly referring relevant clients to each other, and cooperating closely in the joint sponsorship of educational seminars on trade topics designed for local businesses.

The US&FCS Director and trade specialist work carefully with the State of New Hampshire in referring clients for relevant services and planning trade facilitation services that respond to the practical needs of New Hampshire businesses.

By operating out of the Boston District Office, the trade specialist assigned to New Hampshire has the benefit of concentrated trade reference resources, both those that are published and on file, and automated trade information storage and retrieval that yield benefits to New Hampshire clients. Duplication of those systems could not be justified in a small branch office location, and thus the determination within US&FCS is that given current resources and the nearness of the Boston District Office to the market being served, resources within the jurisdiction of the office are now optimally deployed.

Rebuilding Kuwait

QUESTION:

The Commerce Department has established a Gulf Reconstruction Center to provide information to potential American contractors on opportunities in Kuwait. As I understand it, you've been receiving 2,000 calls a day from people and companies around the country.

Are you working with the Kuwait government in this effort? How are you matching American companies with potential business opportunities?

ANSWER:

Yes, we are working with the Kuwait government on providing information to potential American contractors.

Secretary Mosbacher has recently visited Kuwait to meet with the Kuwait government to discuss their reconstruction plans and to gather information for our private sector. During this trip, the Secretary also discussed the reopening of our Foreign Commercial Office facilities in Kuwait with Ambassador Gnehm.

We are currently working with the Kuwait Coordination and Follow-up Office located in Washington, D.C. to develop a database of all American companies who have shown an interest in getting involved with the rebuilding of Kuwait.

The Department of Commerce has been working with the U.S. Army Civil Affairs Unit tasked to assist the Kuwait Task Force which has been planning and implementing the reestablishment of the Kuwaiti government since early November 1990.

Our Foreign Commercial Officers in Saudi Arabia have been working with the Kuwaitis located in Saudi Arabia.

The Foreign Commercial Service in Saudi Arabia has conducted a survey of American companies' capabilities in Saudi Arabia and have passed this information to the Kuwait Government. They have been assisting American companies with meeting with the Kuwait government officials located in Saudi Arabia.

We have been working with the U.S. Army Corps of Engineers to make sure our private sector takes advantage of every business opportunity resulting from the contract the Kuwait government awarded the Corps, for conducting damage assessments and making minor infrastructure repairs.

Under the Trade Promotion Coordination Committee program, which Secretary Mosbacher chairs, we are coordinating trade promotion activities with other U.S. Government agencies. We are developing a series of domestic seminars to present our private sector with information about actual opportunities available in Kuwait. The first seminar will be held in Washington, D.C., in April.

The Gulf Reconstruction Center has been answering 5,000 calls a day from American companies and individuals looking for employment and business opportunities in the Persian Gulf. We are providing the companies with an information packet and counseling. We are referring individuals to the Department of Labor for additional employment information and counseling.

SUBCOMMITTEE RECESS

Senator **HOLLINGS**. Thank you very much, Mr. Secretary, for your appearance here today. The next hearing will be at 10 a.m., March 14 when we will hear from Attorney General Thornburg. Thank you and that is all.

[Whereupon, at 11:27 a.m., Thursday, March 7, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 14.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

TUESDAY, MARCH 19, 1991

U.S. Senate,
Subcommittee of the Committee on Appropriations,
Washington, DC.

The subcommittee met at 10:33 a.m., in room S–146, the Capitol, Hon. Dale Bumpers presiding.

Present: Senators Bumpers, Rudman, and Kasten.

SMALL BUSINESS ADMINISTRATION

STATEMENT OF SUSAN ENGELEITER, ADMINISTRATOR

ACCOMPANIED BY LAWRENCE R. ROSENBAUM, COMPTROLLER

OPENING REMARKS

Senator Bumpers. Today the subcommittee will review the economic development programs under our jurisdiction, the Small Business Administration, Economic Development Administration, and Minority Business Development Agency. We have reviewed SBA annually, but the subcommittee members have not heard testimony from EDA and MBDA for several years.

It is time for this subcommittee to hold this hearing. The war in the Persian Gulf has diverted everyone's attention to foreign affairs. But, as the troops, the marines, sailors, and airmen come home, attention will again focus on the economy, the unemployment rate, and the lingering recession.

Obviously, SBA, EDA, and MBDA can't singlehandedly pull this country out of the economic downturn, but they can make a contribution, a meaningful contribution to economic recovery. SBA can guarantee a bank loan that gets one of those returning service personnel into business. EDA can provide the grant assistance that helps a small rural community possess the infrastructure required for industrial growth and job creation. And MBDA can provide the technical assistance to a minority entrepreneur that gets him or her started in business.

We will hear first today from the Administrator of the Small Business Administration, Ms. Engeleiter.

The President's fiscal year 1992 budget request is $363.5 million for SBA salaries and expenses and credit administration. This is approximately $50 million short of the level needed to maintain current appropriated levels.

Due to the credit reform changes in the Budget Enforcement Act that the administration and the Budget Committees foisted upon us, the Congress must now appropriate the subsidy value for SBA loan and loan guarantee programs. A quick review of the President's budget shows that the OMB got what it wanted: It put credit on budget and then shifted those budgetary resources elsewhere. Thus, the budget only requests $122 million for SBA credit subsidies. But to maintain current credit policies, this subcommittee must provide $489 million in subsidy appropriations, $287 million more than the level requested.

When you put that all together, it is going to cost the committee about $340 million above the President's request to keep SBA loans, loan guarantees, operations, technical assistance, and grants at current 1991 levels.

Ms. Engeleiter, we want you to know that this subcommittee has indeed appreciated having had the opportunity to work with you during the past few years. Senator Hollings wanted to be here, but he has to attend a markup session for the Commerce Committee, which, as you know, he chairs. On behalf of Senator Hollings and all the subcommittee members, we wish you well in your private sector pursuits.

PREPARED STATEMENT

I certainly hope that you have warned Pat Saiki about these credit reform changes. The SBA budget certainly will be a different ballgame from now on. Your full statement will be entered into the record, and if you can summarize, we appreciate that. If you can't, we will understand.

[The statement follows:]

STATEMENT OF SUSAN ENGELEITER

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE:

IT IS AN HONOR TO APPEAR BEFORE YOU AS THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION. I AM PARTICULARLY PLEASED TO COME BEFORE THIS COMMITTEE, IN THIS 38TH YEAR OF THE SBA. I BELIEVE THAT WE AT SBA HAVE ONE OF THE BEST TEAMS IN ALL OF GOVERNMENT. ONE MEMBER OF THAT TEAM, ACCOMPANYING ME TODAY IS THE AGENCY'S COMPTROLLER, LAWRENCE R. ROSENBAUM.

AS WE BEGIN DELIBERATIONS ON THE SMALL BUSINESS ADMINISTRATION'S FISCAL YEAR 1992 BUDGET, THE UNITED STATES SMALL BUSINESS SECTOR REMAINS VERY DYNAMIC. DURING THE FIRST ELEVEN MONTHS OF 1990, NEARLY 600,000 NEW BUSINESS INCORPORATIONS TOOK PLACE, NEARLY ALL OF WHICH WERE SMALL BUSINESSES. CURRENTLY, AS YOU KNOW, THERE ARE OVER 20 MILLION BUSINESSES IN THE UNITED STATES, AND ALL BUT APPROXIMATELY 200,000 OF THEM ARE SMALL BUSINESSES.

THE FY 1992 BUDGET WILL ALLOW THE SBA TO CONTINUE SERVING THESE NEW SMALL ENTERPRISES AND ENCOURAGE THE CONTINUED CREATION OF MORE FIRMS AND MORE JOBS. DURING MY TENURE AS THE ADMINISTRATOR, THIS WORK HAS BEEN GUIDED BY A NUMBER OF GOALS FORMULATED IN A COMPREHENSIVE PROCESS THAT SOLICITED INPUT FROM PROGRAM PROFESSIONALS, INDUSTRY AND TRADE GROUP REPRESENTATIVES, AND GENERAL PRACTITIONERS IN THE SMALL BUSINESS COMMUNITY. THESE GOALS ARE TO:

- IMPROVE SBA'S PROGRAM DELIVERY

- IMPROVE THE AGENCY'S OUTREACH

- ENSURE EQUAL ACCESS AND OPPORTUNITY FOR ALL AMERICANS, INCLUDING MINORITY AND WOMEN ENTREPRENEURS

- IMPROVE THE MANAGEMENT AND ADMINISTRATION OF THE AGENCY TO PREVENT WASTE, FRAUD AND ABUSE.

THE FEDERAL CREDIT REFORM ACT OF 1990 REQUIRES CONGRESS TO APPROPRIATE AN AMOUNT SUFFICIENT TO COVER THE SUBSIDY COSTS ASSOCIATED WITH ALL DIRECT LOAN OBLIGATIONS AND LOAN GUARANTEE COMMITMENTS MADE IN FY 1992 AND BEYOND, AS WELL AS THE ADMINISTRATIVE EXPENSES OF THE LOANS.

THE FY 1992 REQUEST ASSUMES THAT ALL DIRECT BUSINESS LOANS, WITH THE EXCEPTION OF THE SECTION 8(A) LOAN PROGRAM, WILL BE CONVERTED TO GUARANTEED LOANS.

OUR FY 1992 SUBSIDY BUDGET AUTHORITY REQUESTS $121.5 MILLION FOR SBA'S "CREDIT" PROGRAMS. THIS BUDGET AUTHORITY WILL SUPPORT $5.1 BILLION IN LOAN ACTIVITY ($4.1 BILLION SBA SHARE) AND IT REPRESENTS THE LEVEL OF FINANCIAL ASSISTANCE THAT IS NECESSARY TO MEET THE ANTICIPATED DEMAND IN OUR VARIOUS LENDING PROGRAMS. WE ARE ALSO REQUESTING $363.4 MILLION FOR NON-CREDIT PROGRAMS AND ADMINISTRATIVE EXPENSES. THE "CREDIT" BUDGET OF $5.1 BILLION INCLUDES $4.8 BILLION FOR DIRECT AND GUARANTEED BUSINESS LOANS, AND $291.8 MILLION FOR DIRECT DISASTER LOANS. THE LARGEST PART OF THE "CREDIT" BUDGET IS THE $4.1 BILLION FOR THE 7(A) GENERAL BUSINESS LOAN GUARANTY PROGRAM.

THE SBA'S FY 1992 BUDGET REQUEST INCLUDES A CONTINUED COMMITMENT TO OUR 7(A) LOAN GUARANTY PROGRAM. THIS PROGRAM COVERS APPROXIMATELY 45% OF OUR SUBSIDY BUDGET REQUEST FOR BUSINESS LOANS AND 85% OF OUR TOTAL BUSINESS LENDING. THIS BUDGET REQUEST PROPOSES REDUCING THE SBA SHARE TO 70 PERCENT FOR PARTICIPATION IN THE PREFERRED LENDERS PROGRAM/CERTIFIED LENDERS PROGRAM AND WILL HAVE THE EFFECT OF REDUCING THE AVERAGE SBA SHARE TO 75 PERCENT. THROUGH THIS INITIATIVE, WE CAN REDUCE SBA'S PROGRAM LEVEL TO $3.1 BILLION WHICH WILL PROVIDE THE SAME LEVEL OF GROSS COMMITMENTS AVAILABLE IN FY 1991. OUR REQUEST FOR SUBSIDY BUDGET AUTHORITY IS FOR

$24.3 MILLION WHICH WILL SUPPORT $4.1 BILLION IN GUARANTEED LENDING ($3.1 BILLION SBA SHARE).

THIS BUDGET PROPOSES SUBSTANTIAL ASSISTANCE TO THE VENTURE CAPITAL NEEDS OF SMALL BUSINESSES, INCLUDING MINORITY BUSINESSES, THROUGH THE SMALL BUSINESS INVESTMENT COMPANIES (SBICs). WE FULLY SUPPORT THE FY 1990 RESTRUCTURING OF THE INVESTMENT COMPANY PROGRAM AND PROPOSE TO RETAIN SEPARATE FUNDING FOR A MESBIC GUARANTEED PROGRAM IN FY 1992. OUR REQUEST FOR SUBSIDY BUDGET AUTHORITY FOR REGULAR SBIC's IS $10.8 MILLION, WHICH WILL SUPPORT $100 MILLION IN GUARANTEED ACTIVITY. OUR REQUEST FOR SUBSIDY BUDGET AUTHORITY FOR MESBIC's IS $16.3 MILLION WHICH WILL SUPPORT $60 MILLION IN GUARANTEED ACTIVITY. WE ARE CONTINUING TO SEEK WAYS TO REDUCE THE FEDERAL GOVERNMENT'S EXPOSURE TO LOSSES. WE ARE INCREASING OUR EFFORTS TO RESOLVE THE BACKLOG OF SBIC LIQUIDATIONS AND MAXIMIZE THE GOVERNMENT RECOVERY. ADDITIONALLY, WE ARE REWRITING OUR LIQUIDATION POLICIES AND PROCEDURES RELATIVE TO SBICs; CLOSING OUT INACTIVE CASES; DEVELOPING BETTER PROCEDURES FOR VALUING ASSETS; CREATING LIQUIDATION PLANS FOR INDIVIDUAL CASES; AND IMPROVING MANAGEMENT INFORMATION AND RECORDKEEPING SYSTEMS. WE HAVE ALSO BEGAN EFFORTS TO COLLECT $300 MILLION IN LIQUIDATIONS.

IN THE SURETY BOND PROGRAM (WHICH WAS NOT INCLUDED IN THE CREDIT REFORM INITIATIVE), WE HAVE REQUESTED A PROGRAM LEVEL OF $1.6 BILLION. THIS WILL ADDRESS THE ANTICIPATED DEMAND FOLLOWING THE IMPLEMENTATION OF THE PREFERRED SURETY PROGRAM AND THE MANDATORY GUARANTY PERCENTAGES; BOTH FOR THE SOCIALLY AND ECONOMICALLY DISADVANTAGED AND FOR CONTRACTS OF UNDER $100,000. THIS INCREASES THE CURRENT LEVEL BY MORE THAN $66 MILLION. DURING THE PAST TWO DECADES, THIS PROGRAM HAS ASSISTED SMALL BUSINESS BY PROVIDING SURETY BONDS FOR CONTRACT PERFORMANCE. THE PROGRAM IS ONE OF OUR MOST SUCCESSFUL PROGRAMS IN TERMS OF LOSSES.

THE OUTLOOK FOR A SLOWING ECONOMY AND THE TIGHTENED TERMS FOR CREDIT IMPACTS ON SMALL BUSINESS CONCERNS BY PLACING A GREATER DEMAND FOR BONDING NOT ONLY ON GOVERNMENT PROJECTS BUT ON PRIVATE SECTOR PROJECTS AS WELL. A NUMBER OF MAJOR SURETY MARKETS HAVE SET UP DIVISIONS TO SPECIALIZE IN WRITING SMALL CONTRACT BUSINESS AND REGIONAL COMPANIES ALSO HAVE ADDED CAPACITY TO ASSIST SMALL BUSINESS CONCERNS.

IN FY 1990, SBA's OFFICE OF PROCUREMENT ASSISTANCE SAVED THE FEDERAL GOVERNMENT MORE THAN $330 MILLION THROUGH ITS PRIME CONTRACTS AND CERTIFICATE OF COMPETENCY PROGRAMS. THIS OFFICE WILL CONTINUE TO REFLECT THE BUSH ADMINISTRATION'S COMMITMENT TO INCREASING SMALL BUSINESS' SHARE OF FEDERAL PROCUREMENT DOLLARS.

PUBLIC LAW 101-515 AUTHORIZES THE SBA TO MAKE GRANTS TO ANY STATE FOR THE PURPOSE OF CONTRACTING WITH SMALL BUSINESS TO PLANT TREES ON LAND OWNED OR CONTROLLED BY THE STATE OR LOCAL GOVERNMENT. PUBLIC LAW 101-515 AUTHORIZED $15 MILLION IN FY 1991 AND $30 MILLION FOR FY 1992, 1993, AND 1994 TO BE SPENT ON THIS PROGRAM. FUNDING FOR A $110 MILLION TREE PLANTING INITIATIVE HAS BEEN INCLUDED IN THE DEPARTMENT OF AGRICULTURE'S FY 1992 BUDGET, AND IS NOT REQUESTED AS PART OF OUR BUDGET.

WE ARE REQUESTING SUBSIDY BUDGET AUTHORITY FOR FY 1992 IN THE AMOUNT OF $65.9 MILLION TO SUPPORT $292 MILLION IN DISASTER LOAN ACTIVITY. WE BELIEVE THIS AMOUNT SHOULD BE ADEQUATE TO MEET EXPECTED OBLIGATIONS OF AN "AVERAGE" DISASTER YEAR. THIS BUDGET REQUEST PROPOSES TO LIMIT ASSISTANCE ONLY TO THOSE VICTIMS WHO CANNOT OBTAIN CREDIT ELSEWHERE.

FINALLY, MR. CHAIRMAN, WITH RESPECT TO OUR FINANCIAL PROGRAMS WE REQUEST THAT ALL DIRECT BUSINESS LOANS, BE CONVERTED TO GUARANTEED LOANS, WITH THE EXCEPTION OF OUR DISASTER ASSISTANCE PROGRAM AND THE $5 MILLION FOR THE SECTION 8(A) LOAN PROGRAM. THE PHASE OUT OF DIRECT LENDING IN FAVOR OF

GUARANTEED LENDING IS PART OF A GOVERNMENT-WIDE INITIATIVE. DIRECT LOAN PROGRAMS ARE MORE COSTLY TO ADMINISTER AND RESULT IN LARGER SUBSIDY COSTS TO THE FEDERAL GOVERNMENT. IN ADDITION, GUARANTEED LENDING BENEFITS THE BORROWER BY ESTABLISHING A TRACK RECORD WITH A PRIVATE LENDER, WHICH WILL ASSIST THE BORROWER IN ITS FUTURE CREDIT NEEDS. GUARANTEED LOANS ARE ALSO MORE BENEFICIAL TO THE GOVERNMENT BECAUSE THEY ALLOW US TO SERVE MORE SMALL BUSINESS CLIENTS BY LEVERAGING RESOURCES.

IN AN EFFORT TO MOVE TOWARDS ACTUARIALLY-SOUND PROGRAMS AND TO OFFSET DEFAULT COSTS THAT SBA INCURS, WE PROPOSE TO INCREASE THE GUARANTY FEES ON BUSINESS LOANS, INVESTMENT COMPANY LOANS, AND 504 DEVELOPMENT COMPANY LOANS. THIS PROPOSAL MEETS THE GOALS OF A LONG-RANGE, GOVERNMENT-WIDE PROGRAM TO TRANSFER THE COST OF FEDERAL PROGRAMS FROM THE GENERAL TAXPAYER TO THE DIRECT RECIPIENTS OF PROGRAM BENEFITS, AND TO MAKE THE PROGRAMS MORE SELF-SUFFICIENT.

OUR PROPOSAL WOULD INCREASE THE GUARANTY FEE ON BUSINESS LOANS FROM 2 TO 5 PERCENT. SMALL BUSINESS INVESTMENT COMPANY LOANS WOULD BE INCREASED FROM 1.2 TO 5 PERCENT. THE 504 DEVELOPMENT COMPANY LOANS WOULD BE INCREASED FROM 0.5 TO 1 PERCENT. WE DO NOT EXPECT THE FEE INCREASE TO HAVE AN ADVERSE EFFECT ON THE PROGRAMS. FOR EXAMPLE, THE FEE INCREASE IN THE 7(A) PROGRAM WOULD RAISE THE MONTHLY PAYMENTS ON THE AVERAGE LOAN BY A NOMINAL $75.

FINALLY, THE CREDIT BUDGET SUBMISSION DOES NOT INCLUDE PROPOSALS FOR ASSET SALES.

THE SECOND MAJOR PART OF OUR FY 1992 BUDGET SUBMISSION COVERS THE AGENCY'S REQUEST FOR A DIRECT APPROPRIATION OF $179.4 MILLION TO THE SALARIES AND EXPENSES FUND ALONG WITH $184 MILLION REQUESTED IN THE CREDIT PROGRAM AREAS FOR ADMINISTRATIVE EXPENSES. THIS TOTAL APPROPRIATION OF $363.4

WILL FINANCE ALL OF THE SALARIES AND RELATED EXPENSES OF THE AGENCY, ITS NON-CREDIT PROGRAMS AND THE ADMINISTRATIVE EXPENSES UNDER THE FEDERAL CREDIT REFORM ACT. AMONG THE NON-CREDIT PROGRAMS ARE THE SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM, SMALL BUSINESS INSTITUTES, THE SERVICE CORPS OF RETIRED EXECUTIVES, THE SECTION 7(J) PROGRAM, THE WOMEN'S OUTREACH AND OTHER TECHNICAL AND MANAGEMENT ASSISTANCE CONTRACT AND GRANT PROGRAMS.

WE ARE PROPOSING TO INCREASE SBA'S CURRENT AUTHORIZED EMPLOYMENT LEVEL TO 4,050 FULL-TIME EQUIVALENT POSITIONS. THESE ADDITIONAL 38 POSITIONS WILL BE USED IN HIGH PRIORITY AREAS SUCH AS PROCUREMENT ASSISTANCE, SBIC SERVICING, AND MINORITY SMALL BUSINESS/CAPITAL OWNERSHIP DEVELOPMENT PROGRAMS. THIS BUDGET REQUEST ALSO INCLUDES A REQUEST FOR THE OFFICE OF INSPECTOR GENERAL FOR AN ADDITIONAL 34 POSITIONS BRINGING THEIR AUTHORIZED EMPLOYMENT LEVEL TO 173 TO ASSIST IN THEIR EFFORTS TO PREVENT WASTE, FRAUD AND ABUSE. IN ADDITION, THE IG INCREASE RECOGNIZES THE NEED FOR RESOURCES TO MEET THE NEW LEGISLATIVE REQUIREMENTS FOR ANNUAL FINANCIAL AUDITS OF SBA'S FINANCIAL STATEMENTS, AND TO PROVIDE BETTER AUDIT COVERAGE OF THE AGENCY'S PORTFOLIO.

IT IS APPROPRIATE TO RECOGNIZE OUR BUDGETARY SUPPORT FOR THE MINORITY BUSINESS DEVELOPMENT COMMISSION BY INCLUDING $600,000 FOR ITS OPERATIONS IN FY 1992.

THE BUDGET SUBMISSION CONTAINS $493,000 TO CONTINUE THE WORK OF THE NATIONAL WOMEN'S BUSINESS COUNCIL. THE COUNCIL HAS SUBMITTED ITS SECOND ANNUAL REPORT INCLUDING POLICY RECOMMENDATIONS FOR STRENGTHENING WOMEN'S PARTICIPATION IN FEDERAL PROCUREMENT, ACCESS TO CAPITAL AND EXPORTING OPPORTUNITIES.

THE WOMEN'S BUSINESS OWNERSHIP ACT OF 1988 CREATED A NEW DEMONSTRATION TRAINING PROGRAM FOR WOMEN ENTREPRENEURS. WE ARE CONTINUING TO IMPLEMENT

THIS PROGRAM AND THE OTHER PROVISIONS OF LAW - THAT IS MARKETING THE SMALL LOAN PROGRAM, AND WORKING WITH THE NATIONAL WOMEN'S BUSINESS COUNCIL. IN ADDITION, WE ARE CONTINUING TO FOCUS OUR EFFORTS ON ECONOMIC DEVELOPMENT PROGRAMS SUCH AS THE WOMEN'S NETWORK FOR ENTREPRENEURIAL TRAINING (WNET), A MENTOR PROGRAM, AND TRAINING IN EXPORTING OPPORTUNITIES, ACCESS TO CAPITAL AND SELLING TO THE FEDERAL GOVERNMENT.

THE EXPORT REVOLVING LINE OF CREDIT PROGRAM (ERLC) PROGRAM WAS SPECIFICALLY DESIGNED TO ENCOURAGE BANKS TO PROVIDE SHORT-TERM, PRE-EXPORT WORKING CAPITAL TO HELP MORE SMALL BUSINESSES EXPORT THEIR PRODUCTS AND SERVICES ABROAD. UNDER THIS GUARANTY PROGRAM, LOAN PROCEEDS MAY BE USED TO FINANCE LABOR AND MATERIALS NEEDED FOR MANUFACTURING OR WHOLESALING FOR EXPORT, AND TO PENETRATE OR DEVELOP FOREIGN MARKETS, AS WELL AS FOR FUNDS AGAINST ACCOUNTS RECEIVABLE. THE MAXIMUM AMOUNT OF THIS LOAN GUARANTY WAS INCREASED FROM $500,000 TO $750,000 BY THE OMNIBUS TRADE ACT OF 1988 AND UNDER NEW LEGISLATION, THE MATURITY OF AN ERLC LOAN IS BASED ON AN APPLICANT'S BUSINESS CYCLE BUT CANNOT EXCEED 3 YEARS, INCLUDING ALL EXTENSIONS. SBA REGULATIONS ARE NOW BEING REVISED TO ADDRESS THE MOST RECENT CHANGES AND WILL BE IMPLEMENTED SHORTLY.

THE SBA PROVIDED $8 MILLION IN CAPITAL FOR SMALL EXPORTERS IN FY 1990, WITH THE TOTAL NUMBER OF ERLCs AT 54, AN INCREASE OF 50 PERCENT OVER THE NUMBER APPROVED IN FY 1989. IN ADDITION, $33 MILLION WAS PROVIDED TO EXPORTERS UNDER THE SBA 7(A) GENERAL BUSINESS GUARANTY LOAN PROGRAM, WITH THE NUMBER OF LOANS AT 106. ALTHOUGH THE TOTAL DOLLAR VALUE OF ERLCs FELL SLIGHTLY FROM 1989, THE INCREASE IN THE NUMBER OF LOANS REFLECTS A GREATER USE OF THE PROGRAM TO FINANCE SMALLER TRANSACTIONS FOR MORE SMALL BUSINESS EXPORTERS. IN THE FIRST QUARTER OF FY 1991, THE ERLC PROGRAM HAS ALREADY PROVIDED 25 LOANS FOR $3.5 MILLION, IN ADDITION TO 27 GENERAL BUSINESS LOAN GUARANTEES FOR EXPORTERS TOTALING $7.5 MILLION.

AS WE ALL KNOW, SOME AREAS OF RURAL AMERICA HAVE NOT SHARED IN THE PROSPERITY OF OUR NATION'S RECORD ECONOMIC EXPANSION IN RECENT YEARS. DURING FY 1992, CONTINUED EMPHASIS WILL BE PLACED ON BRINGING IMPROVED SERVICES TO RURAL AREAS, PARTICULARLY THOSE AREAS HAVING ECONOMIC PROBLEMS. WE WILL TAKE AN ACTIVE ROLE IN ASSISTING OTHER FEDERAL AGENCIES, STATE GOVERNMENT AND LOCAL COMMUNITIES IN COORDINATING INFORMATION ON SMALL BUSINESS INCUBATORS. THE SUPPORT OF STATE COUNCILS FOR RURAL DEVELOPMENT IS INCLUDED IN THIS BUDGET REQUEST. THIS REQUEST INCLUDES $250,000 AS PART OF SBA'S COMMITMENT TO THIS PRESIDENTIAL INITIATIVE.

MR. CHAIRMAN, I AM PLEASED TO REPORT TO YOU TODAY THAT THE SMALL BUSINESS INNOVATION RESEARCH PROGRAM HAS, SINCE ITS INCEPTION IN 1982, AWARDED IN EXCESS OF 16 THOUSAND FUNDING AGREEMENTS TO DIRECT A SHARE OF $2.0 BILLION IN FEDERAL RESEARCH AND DEVELOPMENT FUNDS TO SMALL HIGH-TECH COMPANIES - THE TYPE OF COMPANIES WHICH ARE RESPONSIBLE FOR MOST OF THE NATION'S NEW PRODUCTS, PROCESSES AND TECHNOLOGIES.

DURING FY 1992 THERE WILL BE A CONTINUED STRONG EMPHASIS ON ASSURING A HIGH RATE OF COMMERCIALIZATION OF SBIR INNOVATIONS. THIS IMPORTANT GOAL REFLECTS A KEY PROVISION OF P.L. 97-219 AND ACTIVITIES WILL BE GUIDED BY THE FINDINGS OF THE MULTI-YEAR COMMERCIALIZATION STUDY AND PROGRAM EXPERIENCE.

WE WILL, THROUGH FY 1992, CONTINUE IN OUR EFFORTS TO IMPROVE INTERNAL PROGRAM EFFICIENCIES. THESE INITIATIVES WILL BE TO ASSURE THAT MANAGEMENT CONTROLS, OVERSIGHT AND DIRECTION ALL SUPPORT EFFICIENT AND EFFECTIVE PROGRAM OPERATION.

THE AGENCY'S SMALL BUSINESS DEVELOPMENT CENTER (SBDC) PROGRAM HAS RECEIVED TREMENDOUS SUPPORT AT THE STATE AND LOCAL LEVELS. BECAUSE THIS PROGRAM

HAS BEEN VERY SUCCESSFUL IN OBTAINING MATCHING FUNDS FROM THE PRIVATE SECTOR FAR IN EXCESS OF ITS REQUIREMENT, WE PROPOSE TO CHANGE THE FUNDING RATIO TO TWO DOLLARS FROM LOCAL SOURCES FOR EVERY DOLLAR CONTRIBUTED BY THE FEDERAL GOVERNMENT. FUNDING IS REQUESTED AT $30 MILLION. IN ADDITION, THIS BUDGET PROPOSES THAT MORE TRADITIONAL BUSINESS DEVELOPMENT ACTIVITIES BE ADMINISTERED THROUGH THE SBDC NETWORK.

AND FINALLY, THE FY 1992 BUDGET REQUEST INCLUDES SEVERAL MANAGEMENT, ADMINISTRATIVE, AND WASTE, FRAUD AND ABUSE INITIATIVES. WE ADMINISTER MANY PROGRAMS AND SERVICES FOR THE BENEFIT OF THE SMALL BUSINESS COMMUNITY. IN THE AREA OF MANAGEMENT, WE INSIST ON COORDINATED, CONSISTENT DELIVERY OF PROGRAMS. WE EXPECT ALL PERSONNEL INVOLVED IN THE DELIVERY OF PROGRAMS NOT ONLY TO BE FULLY KNOWLEDGEABLE IN THEIR RESPECTIVE PROGRAM AREA, BUT ALSO TO HAVE A GENERAL APPRECIATION AND UNDERSTANDING OF ALL OF THE PROGRAMS OF SBA.

IN THE AREA OF ADMINISTRATION, WE ARE CONTINUALLY EVALUATING OUR PROGRAMS AND SERVICES TO IMPROVE DELIVERY, REDUCE DUPLICATION, LESSEN PAPERWORK, AND SIMPLIFY PROCESSES. WE ARE CONDUCTING A FULL REVIEW OF ALL AGENCY STANDARD OPERATING PROCEDURES FOR COMPLETENESS, APPLICABILITY, AND INCLUSION OF LEGISLATIVE REQUIREMENTS. WE ARE DEVELOPING CUSTOMIZED TRAINING CLASSES FOR SPECIFIC SEGMENTS OF OUR OPERATION TO IMPROVE AND INSTILL A LEVEL OF CONSISTENCY IN THE DELIVERY OF PROGRAMS, AND TO INFORM EMPLOYEES OF RECENT LEGISLATIVE CHANGES TO THEIR RESPECTIVE PROGRAMS. WE ARE INSTALLING INTEGRATED OFFICE AUTOMATION SYSTEMS TO STANDARDIZE OUR PROCESSES AND PROVIDE THE ABILITY TO UTILIZE OFF-THE-SHELF FINANCIAL AND OTHER ANALYTICAL TOOLS TO IMPROVE DECISION MAKING, PROGRAM PERFORMANCE AND MANAGEMENT REPORTING. WE ARE NEGOTIATING CROSS-SERVICING ARRANGEMENTS WITH OTHER FEDERAL DEPARTMENTS AND AGENCIES TO TAKE ADVANTAGE OF ECONOMIES OF SCALE IN AREAS SUCH AS PAYROLL, PERSONNEL, AND ADMINISTRATIVE ACCOUNTING. WE ARE IMPROVING THE PHYSICAL WORK ENVIRONMENT THROUGH THE INTRODUCTION OF ERGONOMICS FURNITURE AND IMPROVED WORK SPACE. WE ARE

CONSTANTLY LOOKING TO IMPROVE ADMINISTRATIVE RESPONSE TO SBA PROGRAM PERSONNEL IN AREAS SUCH AS PERSONNEL RECRUITING; TRAINING AND DEVELOPMENT; PROCUREMENT OF GOODS AND SERVICES; ACCOUNTING; SYSTEMS DESIGN; AND INFORMATION MANAGEMENT.

DURING FY 1992, WE WILL BE PLACING INCREASED EMPHASIS ON ELIMINATING WASTE, FRAUD AND ABUSE. THE INITIATIVES DIRECTED TOWARD THIS CONCERN INCLUDE: QUALITY ASSURANCE AND VULNERABILITY STUDIES TO BE PERFORMED UNDER THE DIRECTION OF THE OFFICE OF PROGRAM ANALYSIS AND REVIEW FOR $1 MILLION; CONTRACTS WITH OUTSIDE FIRMS TO AUDIT FINANCIAL STATEMENTS AND FINANCIAL SYSTEMS TO BE PERFORMED UNDER THE GUIDANCE OF THE COMPTROLLER AT A COST OF $1.1 MILLION AND; MANAGEMENT INITIATIVE STUDIES THAT ARE TO BE PERFORMED UNDER THE SUPERVISION OF THE ASSOCIATE DEPUTY ADMINISTRATOR FOR MANAGEMENT AND ADMINISTRATION AT A COST OF $250 THOUSAND.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, WE ARE EVER MINDFUL OF THE PRESIDENT'S PLEDGE TO MAINTAIN A STRONG AND HEALTHY ECONOMY CONDUCIVE TO THE PROSPERITY OF SMALL BUSINESSES; THAT COMMITMENT TO SMALL BUSINESS WAS REITERATED IN THE PRESIDENT'S STATE OF THE UNION ADDRESS IN NOTING THAT WE "SHOULD FOCUS OUR EFFORTS TODAY ON ENCOURAGING ECONOMIC GROWTH, INVESTING IN THE FUTURE, AND GIVING POWER AND OPPORTUNITY TO THE INDIVIDUAL." WE, AT THE SBA BELIEVE THE PRESIDENT'S FY 1992 BUDGET TO BE A "GOOD NEWS" BUDGET AND A REFLECTION OF THIS NATION'S CONTINUED COMMITMENT TO THE SMALL BUSINESS MEN AND WOMEN WHO CONTRIBUTE SO MUCH TO OUR ECONOMY AND TO THE OPPORTUNITIES INHERENT TO THIS GREAT LAND.

THANK YOU.

I WILL BE GLAD TO ADDRESS YOUR QUESTIONS.

FISCAL YEAR 1992 SMALL BUSINESS ADMINISTRATION BUDGET REQUEST

Ms. ENGELEITER. Thank you very much, Mr. Chairman, and I will be happy to summarize. I will make some brief opening comments and then I would be more than delighted to answer any questions that you have for me.

It is an honor to appear before you again as the Administrator of the Small Business Administration. I am particularly pleased to be here in this, the 38th year since the founding of the Small Business Administration. As you mentioned, Mr. Chairman, I did recently inform President Bush of my intentions to return to the Midwest and take a position in the private sector, and the President has reassured me that he will continue his very strong support for the SBA and its mission.

I do want to thank you and your colleagues for the assistance and the support that you have given me and the SBA during my tenure. I believe that we at the SBA have one of the best teams in the Federal system, and one of the members of that team, who I know you are well acquainted with, our Comptroller, Lawrence Rosenbaum, is with me here today.

As we begin deliberations on the Small Business Administration's fiscal year 1992 budget, the U.S. small business sector remains extremely dynamic despite the recession that we are in.

During the first 11 months of 1990, nearly 600,000 new business incorporations took place, and nearly all of those were small firms. Currently, as you know, there are over 20 million businesses in the United States, and all but approximately 200,000 of them are small.

The President's fiscal year 1992 budget will allow the SBA to continue serving these small enterprises and encourage the continued creation of more firms and more jobs in the United States. During my tenure as the Administrator of SBA, this work has been guided by a number of goals, and those goals have included: To improve the SBA's program delivery; to improve the agency's outreach to small firms; to ensure equal access and opportunity for all Americans, including minority and women entrepreneurs; and to improve the management of the administration of the agency to prevent waste, fraud, and abuse.

The Federal Credit Reform Act of 1990 requires Congress and the administration to develop subsidy costs associated with direct loan obligations and loan guarantee commitments made in fiscal year 1992 and beyond.

Therefore, our request to finance the credit programs of this agency has been developed consistent with this Credit Reform Act. Our budget request for credit assistance assumes that all direct loans, with the exception of section 8(a) and disaster lending, will be converted to guaranteed lending.

Therefore, the credit budget of $5.1 billion which we propose includes $4.8 billion for loan and investment guarantees—$3.8 billion SBA share—and $297 million for direct 8(a) and disaster assistance loans.

In addition, we are requesting an increase in the Surety Bond Program, which is not a part of our credit reform initiative. Our proposed program level for fiscal year 1992 is $1.8 billion for the surety program. In an effort to move more toward actuarily sound programs and to offset default costs that ultimately the taxpayer must bear, we propose to increase the guarantee fees on business loans, investment company financings, and 504 development company loans.

We also propose to reduce the percentage of participation in our preferred and certified lender programs.

Mr. Chairman, the second major part of our fiscal year 1992 budget submission covers the agency's request for $363 million to finance all the salaries and related operating expenses of the agency and also to fund the agency's noncredit programs. Among those noncredit programs are the small business development centers, the small business institutes, the Service Corps of Retired Executives, the Section 7(J) Technical Assistance Program, the Women's Business Ownership Program, and other technical and management assistance programs.

Additionally, we are proposing to increase SBA's current authorized employment level to 4,050 full-time equivalent positions. These additional 38 positions will be used in very high priorities such as the Small Business Investment Company Program, procurement assistance, and our minority small business programs. This budget also includes a request for the Office of Inspector General for an additional 34 positions to assist in their efforts to prevent fraud and abuse in the agency's programs.

Mr. Chairman, that concludes my remarks, and I would certainly be happy to answer your questions.

FISCAL YEAR 1991 SUPPLEMENTAL

Senator BUMPERS. Thank you very much, Ms. Engeleiter.

Let me ask you a series of about seven questions and then we will save, perhaps, a few additional questions to be written to you. Incidentally, we would really appreciate a quick response to the written questions.

Ms. ENGELEITER. Sure.

Senator BUMPERS. As you know, the SCORE and Small Business Institutes Program was sequestered last year. The House has put $1.5 million in the supplemental for salaries and expenses at SBA. Can you foresee the use of any of that money to restore the funds that were sequestered for SCORE and small business institutes?

Ms. ENGELEITER. Yes; in fact, we have had a reprogramming request that would not be necessary. If that $1.5 million comes forward, we would restore both of those programs.

Senator BUMPERS. Very good. That is the right answer so far.

Ms. ENGELEITER. OK. [Laughter.]

I hope the next six are just as easy.

MICROBUSINESS LOANS

Senator BUMPERS. On the microbusiness loans, I really have a strong leaning toward that program, but I must confess, I saw the Wall Street Journal article and there was one business in Arkansas that apparently has had a howling success with one of those microloans. I think this is one of the things that the American people would applaud, and that is, instead of putting out $150,000 to $500,000 to people, to make more smaller loans. The people in Arkansas don't think of small business the way we in Washington do. They think of small business as the small-time merchant with five employees. But oftentimes, some embryonic idea for a business only needs $5,000 or $10,000. If you lose it all, you haven't lost much, and if it is a success, you have really had a major success. I am just curious as to where you are on this. I mean, have we not had any money for this in the past? Have we not done this in the past, this microloan business?

Ms. ENGELEITER. To my knowledge, Mr. Chairman, this has not been done in the past that I am aware of. We do see a real need for loans under $15,000. Currently, SBA does about 4.5 percent of all of its loans in the $25,000 category.

While it has been the position of the administration to get away from direct lending, except for the 8(a) direct loans and disaster lending, this is one area where we see, perhaps, a real need for an exception. We are in the process of developing pilot programs around the country for microloans of under $15,000, and we are in the process of convening a national round table discussion of private sector organizations that are currently successfully using these microloans.

As you know, Mr. Chairman, we piloted last year a program for under $50,000 loans, and we have found that program to be extremely popular and successful, and we think that there is also a great need for very small loans under $15,000. So the agency will be going forward with a pilot program.

Senator BUMPERS. I didn't see it, and I may be remiss in not having seen it. Do you have a line item in the budget for the microbusiness loan program?

Mr. ROSENBAUM. In our fiscal year 1992 budget presentation, we have a section under "Economic Empowerment" where we discuss a series of recommendations, one being the microloan program.

Senator BUMPERS. How about the money for it? Are you going to separate that, or is that just going to be a part of the regular program?

Mr. ROSENBAUM. It is going to be part of the regular program, but with a special emphasis in this area.

Senator BUMPERS. Do you have any idea as to the kind of demand that is going to be for this?

Mr. ROSENBAUM. We really don't, other than the fact that we have had successful programs in the area of the under $25,000 loans and under $50,000 loans, and we feel that there is a market out there for these smaller loans.

Senator BUMPERS. How do you define this? Have you written anything so far to define what a microloan is? Is it any loan under $15,000?

Ms. ENGELEITER. Under $15,000 is conventionally what is being done by the private sector organizations right now, and those are the people who we will be convening in the discussion to utilize their expertise. Since there are a lot of questions as to what kind of demand there will be, we think that a pilot project in various locations around the country is the way to go initially.

Senator BUMPERS. Do any States do this?

Ms. ENGELEITER. I am not certain about that.

Senator BUMPERS. Didn't the Wall Street Journal article have something in it?

Ms. ENGELEITER. We have done fairly extensive research in terms of what is being done around the country, and we would be glad to submit something in detail for you, when the final proposal is adopted. We have done significant research on this proposal and expect a pilot program to be available for review shortly.

Senator BUMPERS. I am asking that just to find out if we have a matrix of some State having done it that could give us some guidance about what we want to do.

Ms. ENGELEITER. We have some local units of government.

Senator BUMPERS. Here is the Bangladesh model. [Laughter.]

The program forms teams of five people with shared interests in starting or developing their own business. The group chooses two of its members to receive the first loans, and no one else in that particular group can get a loan until the original recipients have made four consecutive payments. The loan amounts range from $500 to $8,000.

I don't want to pursue that any further except to tell you that I am firmly committed to the concept, and I hope that we can get that program going at the earliest possible time.

Good morning.

Senator RUDMAN. Good morning, Mr. Chairman. How are you?

SMALL BUSINESS DEVELOPMENT CENTERS

Senator BUMPERS. Do you have any information on what impact your proposal to cut the Federal share on small business development centers is likely to have? Right now, as you know, that's a 50–50 proposition with the States. I originally thought that that program was questionable, but GAO assured me that it was a dynamic program and deserved our continued support. It was a very good report they gave on it.

The States like it, and I have talked with some small business people who have received tremendous help from these centers. My question is: If we cut back to the degree you are talking about in your presentation here and we are asking the States to pick up an additional share and the States are just as strapped for money as we are, I am wondering if this is designed to kill the program, or do we know what the States will do?

Ms. ENGELEITER. No, Mr. Chairman, it is not intended to kill the program, and if you will note, this is the first time in a number of years that there has been a request for a substantial amount of money for this program, $30 million, which is a recognition on the part of the administration that this is a program that is likely to be here to stay and they can serve small businesses.

We picked the figure of $30 million because currently there is a 1-to-1 match on the part of the States and private sector organizations to support this particular program.

PROPOSAL TO CHANGE SMALL BUSINESS DEVELOPMENT CENTERS MATCH

We are proposing a 2-to-1 match for fiscal year 1992. It is a very popular program, and one that has substantial interest on the part of the States and the private sector organizations to help fund it.

Senator **BUMPERS**. If we accepted your proposal, what would this ratio go to?

Ms. **ENGELEITER**. It would go to 2-to-1. It is currently 1-to-1.

Senator **BUMPERS**. We are asking them to put up twice as much money as they have been putting up, right?

SMALL BUSINESS DEVELOPMENT CENTERS REGULATIONS

Ms. **ENGELEITER**. We are, but it is our recommendation, Mr. Chairman, in the years ahead that this program be able to provide some of the business development support that is currently being provided by agency employees. In order to accomplish that end, we believe it is necessary that there be some regulation in order to achieve some consistency of the quality of services that are being provided.

Right now, the agency does not have regulatory control over the SBDC program. We currently enter into a contractual relationship with the individual SBDC's. This contractual arrangement determines what kind of services should be provided.

Most have provided quality services, but I believe the industry is interested in also seeing that there are some regulations. The SBA has begun drafting what we would suggest as model regulations to help assure that all SBDC's provide quality service to small business. Then there could be a fairly substantial savings to the agency if more of the services could be provided by the SBDC's rather than by business development personnel employed directly by the agency.

OTHER SMALL BUSINESS ADMINISTRATION PROGRAMS

Senator **BUMPERS**. Ms. Engeleiter, I have got about three other programs I want to ask you about. It won't take but just a little bit. But I must say, in prefacing my remarks as chairman of the Small Business Committee, we deal with these things all the time, and it seems to me that this budget proposal, since the administration has never been able to kill SBA, which seemed to have been the overall goal all along, every one of these programs and the way they are being presented in the budget seem to me like it is just a circuitous way to accomplish what they have not been able to do frontally.

Senator Rudman, are you on the Budget Committee by any chance?

Senator **RUDMAN**. Thankfully, I got off. [Laughter.]

CREDIT REFORM ACT

Senator **BUMPERS**. I would like for anybody, the chairman on down of the Budget Committee, to tell me what the Credit Reform Act does and how it works. I just got back from Arkansas last night and stayed up until midnight last night reading these wonderful memos these people provide for me, but the Credit Reform Act got my attention, and I must confess, I had not really understood what it was we were doing. Senator Rudman, as best I can decipher it, it is that any loan that the Government makes, direct, guaranteed, or otherwise, that has a default rate or has a subsidized interest rate or any other kind of advantage that you would not get if you went to the bank and borrowed the money, instead of scoring that automatically at some percentage to take into consideration the default ratio, the rate, and whatever the difference between a disaster loan of 4 percent and the cost of the money to the Government is, those are the subsidies, and the Credit Reform Act now requires us, instead of just scoring that on the budget, we have to make a separate appropriation to take care of the subsidy.

Senator **RUDMAN**. That is correct.

Senator **BUMPERS**. For example, let's take the regular guaranteed loan program. I can't find anything here, and maybe I am dead wrong. We know, for example, that those loans are made at above the prime interest rate, and the applicant also pays a 2-point fee up front, which, incidentally, you are proposing to double or more.

My question is: How does credit reform affect this program? You don't have a subsidy in interest rates on this program, because these people are paying the bank rate, but you do have a default rate. How are we going to determine in advance what losses are to be expected? Are we just going to use the historical default rate to decide how much we are going to use as a subsidy?

Mr. **ROSENBAUM**. Mr. Chairman, under the Credit Reform Act, we analyze the cash flow of those loans that are being made throughout the maturity of the loan program, and then we estimate what the total cost on a present value basis would be. We take into consideration the total cash flow of cash going out, the disbursement, compared with cash coming in, the fees, in this case.

So if you were to change your assumptions on fees by increasing the fees that you are proposing, you increase the cash and you reduce the subsidy rate. By the same token, in the Disaster Loan Program, if you change the assumptions on the interest rates and raise the interest rates, once again, you increase the cash flow to this loan program and that reduces the subsidy rate.

GUARANTEED LOAN PROGRAM

Senator **BUMPERS**. Have you asked in this budget for a subsidy specifically for the Guaranteed Loan Program?

Mr. **ROSENBAUM**. Yes; we have.

Senator **BUMPERS**. How much?

Mr. **ROSENBAUM**. For the General Business Guaranteed Loan Program, the subsidy is 0.6 percent.

Senator **BUMPERS**. Let me ask you this: Do you ask for a specific appropriation for it, or are you just reducing the revolving fund by the amount?

Mr. **ROSENBAUM**. No; we are asking for a specific appropriation for that.

Senator **BUMPERS**. OK.

Mr. **ROSENBAUM**. That would be about $24 million.

Senator **BUMPERS**. That is on, roughly, $4 billion. What is it going to be in 1992, $4 billion?

Mr. ROSENBAUM. $3.1 is SBA's share for the General Business Guaranteed Loan Program requested for fiscal year 1992.

Senator BUMPERS. It is about $4.2 counting——

Mr. ROSENBAUM. All guaranteed programs are requested at $3.8 billion for fiscal year 1992.

Senator BUMPERS. Yes; well, it is a very difficult thing. Of course, Senator Rudman can tell you, this subcommittee is going to be under tremendous pressure because of the budget agreement, and it seems to me that when we look at how we are going to have to score this, for example, if we don't accept your recommendations and we do it like we have always done, this subcommittee is going to have to come up with a lot of money, and I don't know that we can do it. I don't like the fee increases; I think that is just a slow way of killing the program. If I were a small business applicant and you raised my fee from 2 to 5 percent—is that what it is?

Ms. ENGELEITER. Yes.

Senator BUMPERS [continuing]. That produces another $100 million, doesn't it?

Mr. ROSENBAUM. That is correct.

Senator BUMPERS. I can tell you, in my opinion, the small business community is not going to pay that fee. Nobody has to pay a fee like that. That is outrageous. It looks to me, as I say, it is just designed to kill the program if you cut these loans above $150,000 to a 70-percent guarantee.

Incidentally, do you propose to cut the guarantee on the smaller programs under $150,000? That is now 90 percent.

PREFERRED LENDERS AND CERTIFIED LENDERS PROGRAM

Mr. ROSENBAUM. We are proposing to establish a 70-percent guarantee on all loans approved through the Preferred Lenders and Certified Lenders Programs.

Senator BUMPERS. Isn't the breaking point where the guarantee goes from 90 percent to 85 percent, $150,000?

Mr. ROSENBAUM. Yes, sir, but we are proposing to change that.

Senator BUMPERS. How? I know you are going to 70 percent.

Mr. ROSENBAUM. On those loans in the PLP program, our Preferred Lender Program, and the loans in the CLP, our Certified Lenders Program, we are proposing to drop to 70 percent. The empirical data we have is that the greater amount of exposure to the bank, the less risk the agency has on the loans, and that has a direct effect on the subsidy model.

Senator BUMPERS. I am sure it does.

Mr. ROSENBAUM. Yes, sir.

Senator BUMPERS. Because on the one side, the banks are obviously going to be much more careful about the kinds of loans they make if they only got a 70-percent guarantee, for example, as opposed to a 90 percent or even an 85 percent guarantee.

Mr. ROSENBAUM. That is correct.

Senator BUMPERS. But the question is: Are the banks going to participate at all?

Mr. ROSENBAUM. We feel that they will. The other point is, approximately one-half the loans are going through the CLP and PLP. The other one-half are done on a case-by-case basis, and we are not proposing to change the percentage of participation on those.

Senator BUMPERS. How much credit will $55 million, in the loan guarantee program, how much would a $55 million appropriation support if we don't accept your fee charge?

Mr. ROSENBAUM. If you don't accept our fee charge, our request of about $4 billion will shrink down to about $800 million in total. It doesn't buy a lot, sir.

WOMEN'S BUSINESS OWNERSHIP

Senator BUMPERS. One other question on the National Advisory Commission on Women Business Ownership, how much money do we have in that program for this year? Is it $500,000?

Ms. ENGELEITER. It is $500,000.

Senator BUMPERS. And that is what you are asking for again?

Ms. ENGELEITER. Right.

Senator BUMPERS. You are going to get us all killed. They want more money. [Laughter.]

Ms. ENGELEITER. That is your prerogative, Mr. Chairman. [Laughter.]

Senator BUMPERS. Senator Rudman?

NEW ENGLAND'S SHORT-TERM LOAN PILOT PROGRAM

Senator RUDMAN. Thank you, Mr. Chairman. I only have one question, and that is on your pilot program you have up in New England, which I am sure you are prepared to answer. I think that is a very good idea.

Dale, I don't know if you are familiar with what we are doing up in New England or not, but we have this incredible credit crunch up there which is very, very bad, and it has a particular impact on small businesses. There is now a pilot program in Maine, Massachusetts, and New Hampshire to generate short-term loans to small businesses, which are going to be guaranteed loans. My understanding is that that is going to start about in April.

Ms. ENGELEITER. Right.

Senator RUDMAN. How much are you going to guarantee? What are you going to try to do? Just give us a little bit of information. That seems like a very good response by your administration to this particular problem.

Ms. ENGELEITER. The recommendation came from a regional Administrator in the Northeast, and it was in response to the fact that we have had a dropoff or a decline of 16 percent in guarantee lending requests in the Northeast over the last fiscal year. Nationally, we have had an increase in those loans of 3 percent. The reason we think we have had that kind of a dramatic decline is the failure of some of the financial institutions in the Northeast with the local economy.

Generally, our programs are stronger where the economy is stronger and where there is an interest for startups or for expansions. So we are starting this pilot program, as you indicated, Senator. We are hopeful that it will be successful.

Senator **Rudman**. What kind of numbers are we talking about? What are you setting as the amount of guaranteed loans you are going to underwrite?

Mr. **Rosenbaum**. We approved about 1,100 loans last year in the Northeast section. So far, this year we have approved about 450 loans.

We have set aside sufficient authority to fund this entire pilot. We feel there is money currently available within our general appropriation for credit. We essentially are going to see what the demand is. We feel that we can at least, for this year, during the pilot, be able to meet whatever demand we have.

Senator **Rudman**. My understanding is that the great difference here is that SBA historically has guaranteed long-term, medium-term loans, and these are going to be short-term loans.

Ms. **Engeleiter**. Right.

Senator **Rudman**. This is exactly what they need up there. Some of the banks are going to try to set up some accounts to revolve them through. I guess I am trying to get some sense of how much money we are talking about here in terms of what we are going to be underwriting.

Ms. **Engeleiter**. They will, as you indicate, Senator, be revolving line of credit loans, in which there has been a lot of interest, not just in New England, but throughout the country, for SBA to do more of. It will be part of the 7(a) Guarantee Loan Program, similar to the exporting revolving line of credit program.

So it won't be an earmarked sum; it will be whatever there is a demand for with good reason.

Senator **Rudman**. You are going to change your criteria.

Ms. **Engeleiter**. Right.

Senator **Rudman**. In the sense where you are normally looking at long term, and if somebody wants to come in now in a small business and has good receivables, good inventories that have value, you are going to look at what their requirements are for the short term, essentially, and work with that.

Ms. **Engeleiter**. Working capital, right.

Senator **Rudman**. I think that is very important. If there is a role for the SBA, it seems to me, in this economy, that would be it, as long as you have enough funds to do it. I guess that is my question: Do you have enough guarantee authority to do it?

Mr. **Rosenbaum**. Yes; we have at least $30 to $50 million that we can use for that program, if necessary, until the pilot gets off the ground. Until we see the success rate it is hard to tell exactly what the cost will be.

Senator **Rudman**. Thank you. That was my question.

DISASTER LOANS

Senator **Bumpers**. Ms. Engeleiter, on disaster loans, as you know, those carry a 4-percent loan. You are proposing to say that in the future, in order to get a disaster loan, you have to: No. 1, prove that it is not available elsewhere; and if it is not available elsewhere, then they pay the cost of money to the Government.

Ms. **Engeleiter**. Right.

Senator **BUMPERS**. I can tell you what people from things like Hurricane Hugo are going to say: "What kind of benevolent government is this? This is no deal at all."

I am not saying that you aren't right about this, because it has always disturbed me about this until we had a disaster. I always feel that the Government is maybe a little too generous until we have a disaster, and I see people wiped out, and then I wish we didn't have to charge them any interest at all, we could just make them grants and make them whole.

But if you do that, you also reward people for not taking care of themselves by carrying insurance and all that sort of thing. Because we get so many poor people and people who do get wiped out in these things and unless they get some kind of loan—I went to Clinton, AR, for a big rally for the troops Saturday afternoon, and about the first three people I met thanked me for sending SBA down there in an expeditious way, and those people are getting 4 percent disaster loans. Water was all over this little town of 2,000 people. Every business had water 8 feet high in it. A woman who has a furniture store said, "I lost $250,000. Even that loan didn't make me whole. It just enabled me to get back into business."

I felt very good about it, but she wouldn't be out there thanking me or the Government or anybody else if we adopt this. It is going to be very difficult for us to accept that.

EASTERN EUROPEAN SMALL BUSINESS DEVELOPMENT CENTERS

How about Eastern European SBDC's? Are they competing for any of these Eastern Europe initiatives that we are supposed to be taking, or do you know?

Ms. **ENGELEITER**. The commission has been functioning and has awarded approximately $750,000 in contracts, three contracts to carry out the mission of the commission to set up SBDC's in Eastern Europe.

Senator **BUMPERS**. OK.

Ms. **ENGELEITER**. That is ongoing. We would be glad to provide you more details for the record in terms of their work.

DISASTER FUNDING UNDER CREDIT REFORM

Senator **BUMPERS**. We are going to have several questions for the record, as I pointed out, but one other thing: As I understand it, under the budget agreement now, even under our Disaster Loan Program, it is OMB who is going to have to declare this a disaster; is that correct? Otherwise, it is going to be cut from domestic programs. In other words, Dick Darman is going to have to say, "This is an emergency," otherwise, any money we use is going to have to come out of the domestic discretionary spending; is that correct? Have you ever talked with Dick Darman about this?

Ms. **ENGELEITER**. No; I haven't talked with him. We have talked with the staff.

Mr. **ROSENBAUM**. We have talked with the staff, and the way credit reform is conceived and how it works with disasters is that the Congress appropriates a level which is commensurate with the average level of disaster activity for a particular year, and that is represented in our request. If you were to appropriate at that level and then a large disaster would occur and a supplemental would be required, then we have been told by OMB that the Congress and the appropriators will be held harmless for that supplemental.

If for some reason that amount was low-balled in the appropriation process, then it could create a problem, according to OMB's staff. We haven't talked to Darman directly on this, but in talking to staff people, if appropriations were made at an average level of what disasters are expected to be, and then if we had a large disaster, then the supplemental would be held harmless.

Ms. ENGELEITER. It would have to be a presidentially declared disaster.

Senator BUMPERS. I tell you, I don't want to take the time this morning, but we will just submit a fairly detailed question for you and let you respond to it.

STATUS OF THE SMALL BUSINESS INVESTMENT COMPANIES PROGRAM

One last question, though: SBIC's, can you give me an overview of where we are on them? How much money are we going to lose on them? How many have gone out of business in the last 12 months?

Ms. ENGELEITER. I am not sure I have all the details, Mr. Chairman, but I would be glad to give you a quick overview on it.

Senator BUMPERS. We were going to have a hearing on this with Pat Saiki. We are holding a hearing for her. Staff tells me it is 14 since October.

Ms. ENGELEITER. Fourteen since October?

Senator BUMPERS. What is our exposure on those and what do you think? Have you anticipated our losses on that?

Ms. ENGELEITER. I don't have that broken down for that program.

Senator BUMPERS. Go ahead, Susan.

Ms. ENGELEITER. Generally, we have made a tremendous amount of progress with the program in general. As I think you know, Mr. Chairman, we required all SBIC's to give us a one-time report on their financial condition as of June 1990. We have contracted with and are expecting a report in the next couple of weeks from the National Academy of Public Administration to recommend revisions in the agency's criteria and guidelines for a portfolio evaluation.

We have corrected a very unworkable situation within the Office of the Associate Administrator for Investment. There was dual responsibilities. We transferred the liquidation function to the Office of the Associate Administrator for Investment, which will help the oversight of the program.

We, as you know, suspended the program in terms of new licenses last summer, and we have 2 interim final regulations and 17 proposed changes in the regulations that were issued last October. Since then, we have determined to drop certain proposals; we have made some major changes in some, minor changes in others, and those final regulations are at the Office of Management and Budget right now for final clearance.

We also had a proposed change which you will remember in the adoption of the Government auditing standards. As a result of numerous comments that we got in response to those regulations, we extended the comment period, and that comment period will be over on April 12, 1991.

One issue I really would like to call to your attention is the problem that I talked about at the hearing last summer in regard to having sufficient positions, particularly in the liquidation area. We have added 12 positions, 7 positions in liquidation and 5 to the operations staff. They were requested in the 1991 budget. Unfortunately, the 1991 budget which passed did not provide any funding for those very, very critical positions for the SBIC Program.

So consequently, I authorized the filling of those positions at the expense of other agency positions. We have transferred very vital positions from other agency programs to try and cover those positions which are very much necessary in the SBIC Program.

Our liquidation staff has been expanded to 12, and it will double under this budget that the President is requesting, and I certainly hope that in this budget that you pass we will get the necessary positions for this program, because we certainly didn't get them last year.

Senator BUMPERS. Ms. Engeleiter, I will certainly help you do that, because that is just a mini RTC, taking these assets from these SBIC's that are going under and trying to save as much money as we possibly can. I think we are going to be looking upwardly at $1 billion. I don't know how much we are going to lose out of this program.

Ms. ENGELEITER. Let me tell you, Mr. Chairman, since this whole issue came to our attention through the inspector general's report in 1989, through the efforts of our staff at the SBA, we have been working very diligently. As of September 30, 1990, approximately $765 million of SBIC leverage has been transferred into liquidation since the inception of the program. Of this amount approximately $528 million remain in liquidation with almost $154 million being collected and $83 million being charged off. Additionally, we have disbursed over $3 billion under the SBIC Program of which over $1.3 billion has been repaid and recovered. There still remains $1.6 billion in the active portfolio.

Senator BUMPERS. That is very impressive.

Ms. ENGELEITER. It is. I think they have done a great job.

Senator BUMPERS. I wish RTC could give us a report like that. We are going to have a separate hearing on that, as you know, shortly.

Do you have anything else?

Senator Kasten, I am sorry.

Senator KASTEN. Mr. Chairman, thank you. First of all, I was in the hearing in the Commerce Committee and wasn't able to be here, but I first want to say thank you to Susan for a job well done, and particularly with regard to this SBIC problem. We have enjoyed working with her, particularly, I have enjoyed working with her, and I think that we have got a chance to make some real progress with the base that you have built. Thanks and congratulations.

Ms. ENGELEITER. Thank you.

TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM

Senator **KASTEN**. I wanted to ask one, Mr. Chairman. A major problem facing many small businesses is the difficulty that small businesses have in putting new technologies and modern equipment into their businesses. Last year, we authorized a Small Business Technology Transfer Demonstration Program, and it was designed to provide technology transfer services through, basically, a network of community and technical colleges in the Midwest known as the Community College Association for Technology Transfer.

This group of schools, and we have four of them, actually, in Wisconsin, that are just being organized. I recently visited the North Central Technical College in Wausau, which is one of these schools, and was very impressed with the particular part of the program, the laser technology program.

I think that this can be of tremendous value to small business, this partnership that we are achieving between the educational institutions and small businesses. I think particularly with this particular program we must have a model. I would just like your comments on this technology transfer initiative.

Ms. **ENGELEITER**. We believe it is an excellent program, Senator, and one that, of course, was authorized but there was no funding appropriated. We think that there is a very great need for small- and medium-sized companies to have this assistance in technology transfer.

If money is appropriated for the demonstration program, we think we could coordinate this program with the small business development centers that exist throughout the country and it would be a very, very productive program.

Senator **KASTEN**. I think what all of us are hoping is that we can get a combination with the small business development centers and with this technology, which will then basically marry these two together. The program in Wausau is particularly impressive, but there are a whole bunch more throughout the Midwest that I think we have an opportunity to support.

Ms. **ENGELEITER**. That would be excellent. We would wholeheartedly support that.

Senator **KASTEN**. Mr. Chairman, I have a couple of other questions that I will put in the record. Thank you very much.

ADDITIONAL COMMITTEE QUESTIONS

Senator **BUMPERS**. Ms. Engeleiter, thank you very much for being with us this morning.

Senator **RUDMAN**. Thank you.

Senator **BUMPERS**. Everybody that wishes to submit questions may, and we will have them within 24 hours.

Ms. **ENGELEITER**. We will get responses to you promptly.

Senator **BUMPERS**. Susan, we wish you the very best. It has been a real pleasure working with you.

Ms. **ENGELEITER**. Thank you. Thank you. Thanks, Bob.

[The following questions were not asked at the hearing, but were submitted to the administration for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

CREDIT REFORM

QUESTION: As I noted, this committee must now appropriate funds for every loan or loan guarantee that SBA makes. As I understand your budget, SBA is requesting only $122 million instead of the current baseline level of $409 million in subsidies, but is maintaining that the same total level of credit will be available to small businesses — $4.8 billion.

Please explain again the fee and risk sharing changes that allow you to shift this subsidy cost from SBA to the lenders or credit applicants?

ANSWER: The $409 million represents the subsidy budget authority needed under Current Services assumptions, this year's loan levels adjusted for inflation but with no programmatic changes. The $122 million is the reduced level of subsidy budget authority needed to fund the same level of lending if all of the following programmatic changes are made: the conversion of all direct loans, with the exception of the Section 8(a) loan program, to guaranteed loans; increasing fees on general business and SBIC loans to 5 percent; and increasing the 504 guarantee fee to 1%. The request does not propose to increase the current 1 percent guarantee fee on the mini loan program.

The 1992 budget also requests reducing the SBA share to 70 percent for participation in the Preferred Lenders Program/Certified Lenders Program. This reduction will have the effect of reducing the average SBA share from 80 percent to 75 percent.

In the disaster loan program, we propose to limit assistance only to those victims who cannot obtain credit elsewhere and to change an interest rate equal to the Treasury's cost of funds. The combination of all the above credit initiatives would serve to reduce the subsidy budget authority requirement from $409 million to $122 million.

QUESTION: Why do you believe that banks will continue to make the same amount of funds available to small businesses if SBA is only guaranteeing 75% instead of 85% of a loan? What evidence do you have that you will not simply constrict the amount of capital available to American small business?

ANSWER: We believe the Preferred Lender Program (PLP) and Certified Lender Program (CLP) have proved that participating lenders still find the SBA program profitable at a lower guaranty level. However, at the lower guaranty/higher bank exposure level, the participating lender may be more restrictive in reviewing credit, and may only accept and fund the stronger credit situations. All of the activity through the PLP/CLP accounts for approximately 45-50 percent of the loans approved. The other loans will continue to be guaranteed at the levels currently utilized.

QUESTION: Senator Bumpers has the pleasure of being on SBA's Appropriations Committee as well as serving as chairman of your Authorization Committee. As I read your budget, all of these credit eligibility changes are requested in appropriations language rather than permanent law. Is that correct?

ANSWER: The proposed fee change for the 7(a) program from 2% to 5% and the proposal to reduce SBA's guarantee for CLP and PLP lenders to 70% are both in the proposed appropriations language.

The fee change from 1.2% to 5% for SBIC loans and from .5% to 1% for 504 Development Company loans does not require a change in permanent law or appropriations language. SBA is authorized to change these fees administratively.

The proposed changes in the Disaster Program, limiting loans to those who cannot obtain credit elsewhere and increasing the interest rate to the Treasury's market rate, both require changes to permanent law.

QUESTION: Under this credit reform procedure -- if the Authorization Committee or the Appropriations Committee does not accept your proposed credit risk and fee changes -- and only $122 million is appropriated for credit subsidies -- that means that a lot less than $4.8 billion will be available for SBA loans and loan guarantees. Is that correct?

If that is so, how much credit would $122 million buy without these eligibility changes? Please break-out these amounts by BLIF, disaster loans, etc.

ANSWER: It is true that if the Agency's credit risk and fee changes are not adopted and the subsidy budget authority remains at $122 million, a much lower level of lending activity will be available. See the chart below for a comparison of program levels available with or without the proposed changes.

	FY 1992 Budget Auth. Request	Gross Program Level Supported With Proposed Credit Changes	Gross Program Level Supported W/O Proposed Credit Changes
		($ in Millions)	
Direct Loans			
Handicapped	$ -	$ -	$ -
Veterans	-	-	-
Economic Opp.	-	-	-
8(a)	1.5	5.0	5.0
Investment Co.	-	-	-
Total	$ 1.5	$ 5.0	$ 5.0
Guarantee Loans			
General Business	$ 24.3	$ 4,117.3	$ 497.2
Dev. Co 502	2.7	551.0	25.0
504	-	-	250.0
Investment Co.	10.8	100.0	74.6
Specialized In. Co.	16.3	60.0	60.0
Total	$ 54.1	$ 4,828.3	$ 906.8
Disaster	65.9	291.8	198.0
Grand Total	$ 121.5	$ 5,125.1	$ 1,109.8

DISASTER LOANS

QUESTION:	One of the programs that almost every Senator has had to turn to from one time or another is SBA's Disaster Loans. Your budget, however, proposes to cut in half the amount of credit available for disaster loans. Appropriated subsidies drop from $126.2 million in 1991 to $65.9 million in 1992. Please explain your "credit elsewhere" proposal for disaster loan assistance? Would this extend to all types of loans for all types of disasters?
ANSWER:	The "credit elsewhere" proposal is only applicable for borrowers who cannot secure credit elsewhere. Historically, this has only been 20% of the disaster activity. This proposal includes loans for all types of disasters.
QUESTION:	Most members have found that there are not enough federal programs to help out in major disasters. But, your budget is trying to constrain one of those that is. I know the federal budget is tight, but is it really necessary to deny help to people who have just been devastated by a flood, tornado, earthquake or hurricane?

ANSWER: The FY 1992 subsidy estimate for disaster includes reductions related to the Administration's proposal to restrict credit to borrowers who cannot obtain credit elsewhere and increase interest to the Treasury's cost of borrowing. Therefore, the subsidy change from FY 1991 to FY 1992 is based on a program level of $350 million in FY 1991 being reduced to $292 million in FY 1992. We would not deny disaster assistance to eligible applicants who have been devastated by a flood, tornado, earthquake or hurricane.

QUESTION: We are learning under this supplemental, that OMB is feeling its oats with its unilateral authorities under the Budget Enforcement Act. The Congress has brought forward many desert storm expenses for the Commerce Department and Health and Human Services -- and OMB says "No, that is not an emergency." Aid for the State Department, Defense Department, Israel or Turkey is an emergency -- but not for domestic agencies.

Now that disaster loans must be appropriated, what makes you believe that OMB will submit "emergency" requests for disasters that exceed appropriated levels?

ANSWER: If a major disaster occurs and funds are not available, we feel confident that the Administration will make allowances to assist those who have been devastated and are truly in need of federal assistance.

QUESTION: Have you discussed this issue one on one with OMB Director Dick Darman?

ANSWER: This issue has been discussed with our OMB examiner, but we have not had discussions on this subject with the OMB Director.

SCORE

QUESTION: The Service Corps of Retired Executives (SCORE) only receives $2.8 million in appropriations. This program provides a lot of bang for the buck by enabling businessmen who truly have "been there" to provide hands on assistance.

As you know, in FY 1991 the Senate proposed $3.1 million for SCORE, but agreed to $2.8 million in conference. The Senate version of the FY 1991 supplemental contains bill language to ensure that SCORE gets the $2.8 million because SBA was withholding money from the program.

Your FY 1992 request leaves SCORE in a hard freeze at $2.8 million. Since inflation alone would require more, what cuts are you proposing in the program?

ANSWER: We believe firmly that, working together with the National SCORE Association, we will improve both the quality and efficiency of the program. Among other changes, SBA is stepping up its support of training programs for SCORE volunteers. The SBA was internally reprogramming SCORE funds to help pay for items that were not funded in our FY 1991 appropriation including 142 authorized positions, a portion of the general pay raise and all of the locality pay. If the supplemental appropriation is approved, then we will restore the SCORE program to its original appropriated level as well as the other programs where internal reprogramming has occurred.

The level of $2.8 million is $300 thousand above the 1990 level and should be sufficient to meet all of the demands of the program.

QUESTION: Do you agree that SCORE is a very cost effective way to provide valuable technical assistance? How would you evaluate SCORE technical assistance versus that provided by SBA itself and Small Business Development Centers?

ANSWER: Our twenty five years of experience working with and promoting of SCORE services has shown clearly that they are extremely cost efficient. However, we are convinced that the services provided to the public by SCORE, SBDCs and SBIs are each unique and essential.

As the associations themselves have argued, we agree that the three are complimentary and neither duplicating or competing.

SMALL BUSINESS DEVELOPMENT CENTERS

QUESTION: The FY 1992 budget proposes to reduce SBA's support for Small Business Development Centers (SBDC) from $55.8 million to $30 million.

Right now the SBDC program functions on a one for one match with the states. Your budget changes that to two state dollars for every federal dollar.

If we were to pass your budget request for the SBDCs without amendment — what do you really believe will happen?

Will states come forward or will we just be cutting the existing SBDC programs in half?

ANSWER: The Administration believes that if the funding formula they are recommending is adopted, that there will be no reduction in either the number of SBDCs or the service they provide. Their assumption is based on the belief that the state and local governments will make up for the reduction in Federal funds provided to the SBDC Program.

QUESTION: What is your assessment of the quality of small business technical assistance provided by the SBDCs?

ANSWER: There is a wide range of technical assistance provided by SBDCs, nationally. Several SBDCs are assisting inventors to evaluate the technical and market feasibility of new products.

These SBDCs also assist small businesses to identify sources of venture capital, provide patent and copyright information and sponsor fairs for inventors to demonstrate their products and make industry contacts. Other SBDCs offer counseling and training to assist their clients in obtaining SBIR research agreements from various Federal agencies. Still other SBDCs are linking their assistance services with small business incubators.

The quality of this assistance varies with the general maturity of the SBDC, and more especially, with the resources that the SBDC has available to respond to a particular small business' technical needs.

QUESTION: Which SBDCs do you believe are the most effective and why?

ANSWER: The most effective SBDCs are those that have obtained a certain level of maturity after being in the Program for several years. In addition to offering the "basic" counseling and training services, all of the "mature" SBDCs offer a variety of "special" services which may include international trade, rural development, capital formation, Federal and state procurement, or various kinds of technical assistance to its small business clients.

Of equal importance in measuring the effectiveness of individual SBDCs, are the qualifications and experience of the State Director and his/her subcenter Directors. Directors play a key role in determining the effectiveness of an SBDC in such areas as the leveraging of funds, recruiting of resources, advocating the program, and of course, in the general management of the program. The effectiveness of a particular program is, in large part, attributable to the manner in which these Directors carry out their responsibilities.

QUESTION: Our staff advises that in the field there appears to be little coordination between SBA Small Business Development Centers, EDA Economic Development Centers and MBDA Minority Business Development Centers. These activities often exist in the same cities. What is your assessment? What actions do you take at headquarters to reduce duplication with these other technical assistance resources?

ANSWER: SBA Small Business Development Centers, Economic Development Centers (EDA), and Minority Business Development Centers (MBDA) are primarily located in the largest metropolitan areas where there is a dearth of service providers. In addition, SBDCs focus on providing small business services, EDA concentrates on community development services and MBDA operates with a restricted clientele. Given the scarcity of available resources and the different audiences involved, there appears to be little or no duplication of assistance among these three resources.

Over the years, the Agency has maintained close communications with its counterparts at the Department of Commerce's EDA Program. In the growth years of the SBDC Program, frequent conversations were held between these two Governmental entities in an effort to effectively coordinate the placement of SBDCs vis-a-vis Economic Development Centers as well as to discuss mutual matters of interest. Discussions have, from time to time, also been held with officials from the MBDA Program -- but on a much more limited basis.

EASTERN EUROPE INITIATIVE

QUESTION: In FY 1991, Congress appropriated $1 million for a Small Business Development Center (SBDC) Eastern European Technical Assistance Program. Your 1992 budget requests no appropriations to continue the program.

What is the status of this Eastern Europe program?

ANSWER: The Central European Small Business Enterprise Development Commission (the Commission) was established by Congress in PL 101-515, in accordance with Section 25 of the Small Business Act, amended November 25, 1990, to develop in Czechoslovakia, Poland and Hungary a self-sustaining system to provide management and technical assistance to small business owners. This independent Commission is comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities and the Association of Small Business Development Centers. The Commission first met in January of 1991, and prepared a task order to solicit and contract with a private consulting firm(s).

A panel was formed consisting of members from the staff of the Commission, the Office of International Trade, the Office of Small Business Development Centers, and the East European Division from the Department of Commerce. Unfortunately after several weeks of attempts to include AID, AID wrote to the Chairman of the Commission and indicated they were unable to participate in the panel. The panel members evaluated the numerous proposals received including several proposals submitted by individual SBDCs. The panel members submitted the top four proposals for Hungary, Czechoslovakia, and Poland to the Commission for final selection.

In March of 1991, the Commission members evaluated in the light of its published criteria the various offers for the first set of contracts and has chosen the following offerors to receive the awards: Hungary, Avenel & Associates; Poland, Scientex International/Center for Privatization; and Czechoslovakia, The Kenan Institute. These firms have entered into contracts with the Commission and are charged with the following tasks as set forth in PL 101-515 to be completed by September 30, 1991:

1. To determine the management and technical assistance needs of small businesses in Czechoslovakia, Poland and Hungary;

2. To evaluate the Small Business Administration sponsored Small Business Development Center-programs which might be replicated in each of the three countries; and

3. To identify and assess the capabilities of educational institutions in each country to develop a Small Business Development Center type program.

Concerning the 1992 budget, we believe the activities of the Commission are not consistent with the Congressionally mandated objectives of the SBA.

QUESTION: Are several SBDCs competing for these funds?

ANSWER: Yes, several SBDCs did compete for the first set of contracts.

QUESTION: Do you or your staff hold meetings with other agencies with new programs in Eastern Europe (like AID)?

ANSWER: The Associate Deputy Administrator for Special Programs (ADA/SP), was appointed to the Commission by the Administrator and subsequently elected Chairman by the other Commission members. The ADA/SP is in close interaction and cooperation regarding the Eastern European initiative with USIA, AID, DOC, the Trade Promotion Coordinating Committee and the subcommittee for Eastern Europe and Soviet Union.

SBA RURAL BUSINESS PROGRAMS

QUESTION: $250 thousand is included in the FY 1992 Budget for Rural Development. Could you explain what these funds would be used for?

ANSWER: Funds will be made available to designated Rural Resource Centers on a matching basis. We would expect to provide between $20,000 and $40,000 to each entity. We would expect them to raise at least an equal amount from state and local sources.

QUESTION: What plans does SBA have to increase rural development outreach efforts? How are your programs coordinated with the Farmers Home Administration?

ANSWER: One concern of rural communities is the lack of access to information. To help alleviate this problem, SBA developed a resource guide of federal and state programs for economic development, entitled "Working Together." It has recently been updated and we are currently seeking private sector support to publish it.

In addition, we just released two publications for community economic development leaders. The casebook provides examples of successful economic development strategies undertaken by rural communities across the country. Based on examples in the casebook, the reader will be able to develop strategies that will work in his or her community. These publications are being pilot tested in our field offices. If there is a demand for them, we would like to make them available on a continuous basis.

An ongoing initiative cosponsored by Pacific Bell Directory is the "Small Business Success" publication which is distributed to small businesses on an annual basis. It contains timely and informative articles as well as authoritive facts regarding resources vital to small businesses. It enables SBA and the private sector to reach out together to a broad audience at minimal expense to the Agency. Our fourth volume will be released during Small Business Week.

We will continue to expand our videotape library of business management subjects. These videos have enabled us to increase the accessibility to potential and existing small businesses who are located in rural areas, to information they would otherwise not be able to obtain locally. Our fourth videotape, which will address Homebased Business, will be released in June.

We will continue to extend our outreach to rural areas outside our current network of resources by supporting the Small Business Mobile Assistance Centers that are currently operating in three of our regions. These Centers are mobile vans specially equipped to deliver SBA program information and materials.

The Atlanta project delivers services to rural communities throughout the southeast region. There are currently two 40-foot trailers, towed by tractor, that are bringing small business expertise to rural communities. Each year, since 1988, the number of visits to rural communities has nearly doubled. The project is designed to mobilize rural communities and develop local leadership. The Center is also the catalyst for a week-long series of activities planned by the community's local business development committee.

The North Dakota Project is similar to the Atlanta Project, utitlizing one recreational vehicle as its delivery system. It has been operating for nearly one year.

The Columbus, Ohio office was just made operational. It delivers management and technical information to small maufacturing and distribution firms in rural areas of the state. Businesses view working demonstrations, including a "factory-in-a-box", and explore the potential applications to their firms of the concepts demonstrated. State-of-the-art computer programs lend significantly to this project.

To overcome the geographic isolation of existing and potential small business owners, a database of small business information that can be accessed by personal computer will be developed. We would like to establish a nationwide electronic bulletin-board type network that would allow individual small business owners and managers to access SBA information on their personal computers. The network will increase small businesses' and government agencies' accessibility to SBA information particularly benefiting those located in rural areas or some distance from SBA resources.

Although not funded by the Agency, the Small Business Institutes are providing community rural development consultation which provide in-depth assistance to rural communities in creating long-term economic strategies.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

QUESTION: At the hearing this morning, Administrator Engeleiter spoke about an SBA budget proposal to create a new program for microbusiness loans at SBA, which would be funded out of the Economic Opportunity Loan Program. I am very supportive of the establishment of such a pilot program. However, I question how SBA's proposal squares with the Administration's proposal to eliminate all SBA direct loans, except the 8(a) loans? Further please elaborate on what steps have you taken to establish this pilot program and when you foresee it being up and running?

ANSWER: The micro loan proposal has not been formally proposed, but has received some consideration for implementation this year. If adopted this year, the Economic Opportunity Loan Program offers a way of funding without requiring a legislative change. This is not seen as a long range, or permanent new loan program, but rather as a shorter range effort to battle the economic downturn being experienced.

QUESTION: Does the Administration have any data supporting the states' ability to double matching funds to SBDCs? What is the projected impact on SBDCs of doubling the matching funds requirements? How many SBDCs will not be able to continue current levels of services, and how many might drop out of the program.

ANSWER: This is an Administration initiative. The Agency does not have any specific data supporting the states' ability to double matching funds to SBDCs. However, we do have existing data reflecting that 45 of the 57 SBDCs currently exceed their matching requirements. We would not anticipate any reduction in services.

QUESTION: Mrs. Engeleiter recently sent a letter requesting extension of SBA's cosponsorship authority which allows the Agency to enter into agreements with private business to carry out seminars and other programs for business. Could you explain, including specific examples, the impact on the Agency of the expiration of this authority?

ANSWER: As referenced in the letter by the Administrator, the extension of authority to conduct cosponsorships is critical to fulfillment of the Agency's education and training mission. Given the diverse management and information needs of small businesses it is pivotal that the Agency continue to have the ability to use private sector resources to respond to those needs. This is important not only because of reduced Federal resources, but also because of the need to utilize existing expertise and resources only available from the private sector.

SBA is presently leveraging nearly seven dollars from private sector partners for every dollar SBA invests in cosponsored projects. The estimated totals for the last year are at least $6,221,984 from the private sector to $832,832 from SBA. This makes the Agency's cosponsorship authority perhaps one of the most effective "leveraging" programs in the Federal government.

Specifically, failure to renew cosponsorship authority would prevent SBA from conducting a substantial portion of its training and management information efforts. Examples would include:

o Termination of the national publication titled "Small Business Success," which includes timely business and management articles along with important resource information. This publication, produced in cosponsorship with Pacific Bell Directory, involves an investment of approximately $300,000 annually by Pacific Bell Directory, compared to less than $1,000 from SBA;

o Termination of the "Success Symposium" for small businesses cosponsored with five separate telecommunication companies in 25 states. These conferences, which have been conducted over the last several years, have reached several thousand small business people. The slide presentation from this conference series was used to open the 1986 White House Conference on Small Business. Investments from the cosponsors are over $1,000,000 annually, compared to less than $75,000 from SBA;

o Termination of major training initiatives with regard to minorities, veterans, international trade, and women in business. Most of SBA's outreach efforts with these groups are conducted through the cosponsorship process;

o Fulfillment of mandated projects by Congress. In addition to minorities, veterans, exporting, and women in business, this would also include projects for rural America.

This is just a small sampling of the projects cosponsored with the private sector. Its continuation is not only important to SBA, but more importantly to the small business people we serve.

QUESTION: The budget request for 1992 contains substantial additional funds for both the Office of Inspector General and the Office of General Counsel. I understand that these requests are based on work created by continuing problems in the SBIC program. Could you elaborate on both of these requests?

ANSWER: The additional resources requested for the Office of Inspector General (Auditing Division) are based on the need to: (1) assure adequate audit coverage of the SBIC program; (2) increase audit coverage of other SBA programs which have virtually gone unaudited due to limited auditing resources; and (3) create audit coverage of SBA's revolving fund financial statements as required by law.

We are required by law to audit each SBIC every two years. Last year, problems were identified concerning valuation of SBICs' investment portfolios. As a result, the Auditing Division has increased the scope of audits performed on SBICs and instituted a quality review program of the SBICs' annual financial statement audits performed by certified public accountants. Both efforts require an increased level of resources over the amount that had been devoted to SBICs in previous years. We plan to continue providing this level of coverage to the SBIC program due to the high risks associated with it. To do so, however, diminishes our ability to audit other SBA programs.

Audit coverage of the SBIC program currently consumes about three fourths of the Auditing Division's resources, leaving such a small level of resources for audit coverage of other SBA programs that many go unaudited for years. SBA's financial exposure in the SBIC program is about $1.5 billion. The Government's program activity that SBA manages exceeds $30 billion (the value of all outstanding guarantees, loans, contracts and so forth). Therefore, a significant portion of SBA's programs are not being audited on a regular cycle. Most of the FY 1992 positions requested will be used to increase audit coverage in programs that receive little or no coverage now. We anticipate requesting additional resources for this purpose in future years.

The Chief Financial Officers Act of 1990 requires annual audits of agencies' revolving fund financial statements, beginning with audited financial statements for FY 1991. We have requested $2.2 million and two positions to perform audits of both the FY 1991 and FY 1992 financial statements during FY 1992. In subsequent years, we will need only about half that amount for this requirement.

In summary, with the additional resources requested for the Office of Inspector General, we will provide the necessary audit coverage for the SBIC program, as well as increase our coverage in other areas.

The Office of General Counsel has reflected a constant growth in the liquidation portfolio over the last five years and we project a substantial increase over the next 12 months.

Currently, the Office of General Counsel oversees and works with the Office of Liquidation on the following cases:

SBA Receiverships	53	$165 million
Bankruptcy Cases	4	$ 70 million
Anticipated Receiverships	10	$ 42 million
3rd Party Receiverships	1	$ 35 million
Pending Resolution	13	$ 34 million
		$346 million

These statistics represent cases in liquidation as of April 1, 1991. The Office of Liquidation indicates that eight (8) additional companies with $60 to $70 million in leverage have recently been determined to be capitally impaired and will likely be transferred to liquidation. As the annual financial statements arrive from the SBICs this month, additional companies will undoubtedly be transferred to liquidation. Fourteen cases were transferred the first four months of this fiscal year. We anticipate that we will exceed the historical 26 cases per year average transferred into liquidation.

The complexity and size of the cases will warrant a significant commitment of resources. Many of the SBICs exceed $10 million in leverage and require litigation or extensive negotiations to obtain a receivership or to undertake a self liquidation.

Subsequently, the cases require monitoring of the receiverships and self liquidations. In addition, we are commencing litigation against the officers, directors and accountants of two SBICs which will require the commitment of two people full-time plus extensive travel. The sophistication of the SBICs investment is continuing to grow as well. One SBIC is in bankruptcy and selling a television station which we must monitor closely. Another SBIC is heavily involved in cable television on the west coast which requires attention to valuation and federal communications laws. The SBIC real estate portfolio is continuing to grow, particularly in the Northeast, where it is incumbent upon SBA to monitor the properties and try to obtain a quick sale to maximize recovery. The receivership operations are also becoming very complex and time consuming. A few of the receiverships involve SBICs who have over one hundred loans with significant legal action involving foreclosures in many states.

We are trying to monitor all these cases with a staff of five full-time people but will need additional resources to do the work as efficiently as possible.

QUESTION: SBA's FY 1992 Budget request seeks $1.5 million for the Minority Small Business National Automated System. In light of last year's appropriation for the same purpose, please explain why an additional appropriation is needed for this purpose at this time?

ANSWER: There were no funds appropriated in FY 1991 for the National Automation System, therefore, we are requesting $1.5 million for this purpose in FY 1992.

QUESTION: The budget request for 1992 contains a reduction of 32 positions for SBA's Office of Business Development. Would the reductions be in central office or field staff? Could you describe the anticipated impact of the reductions on the programs currently administered by that office?

ANSWER: The reduction of 10% or 32 positions in the Office of Business Development is due to the Administration's initiative to increase utilization of the SBDCs in administering business development activities. The majority of the reduction will be in field staff. We would anticipate that the reduction of Business Development positions would not reduce services in any of our programs provided that the workload is transferred to the SBDCs.

QUESTION: How many Schedule C employees at SBA have you converted to or placed in career positions in the last 90 days? Please list the Schedule C position and the career position (including the grade levels) for each converted employee.

ANSWER: There have been no Schedule C employees at SBA converted to or placed in career positions in the last 90 days.

QUESTION: Are there other such conversions planned? If so, please list the positions and grade levels for those conversions.

ANSWER: No such conversions are planned. However, Schedule C employees do have the right to apply for career positions and would be given appropriate consideration.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

SMALL BUSINESS DEVELOPMENT CENTERS

QUESTION: The Agency is proposing to increase the utilization of Small Business Development Centers in administering business development activities. As a result, a decrease of 32 workyears in SBA staffing is proposed. However, at the same time the Administration is proposing to increase the required State match for SBDC funding from 1 to 1, to 2 to 1. This would reduce the Federal appropriation for the SBDC program from $55.7 million to $30 million. Aren't these proposals inconsistent? Given the economic conditions of many of the States, do you really expect them to meet the new matching requirement?

ANSWER: The Agency is proposing to expand utilization of the SBDC network to assist in training, counseling and other business development activities. We do not believe that this proposal is inconsistent with the proposal to change the state match for SBDC funding.

In response to the question relating to the states ability to meet the new matching requirement, forty-five (45) out of a total of fifty-seven (57) SBDCs have obtained matching funds in excess of their requirement. These matching funds are received from state and local governments, academic institutions and the private sector.

RESPONSE TO THE PERSIAN GULF

QUESTION: Recent events in the Persian Gulf present the Agency with two challenges; responding to the needs of returning veterans, and targeting opportunities for small businessmen in Kuwait and other countries of the region. How are you responding to these twin challenges?

ANSWER: The SBA response to the commercial and contracting opportunities following the crisis in Kuwait has been coordinated among the SBA Office of Procurement Assistance, the SBA Office of International Trade, the SBA Office of Congressional and Legislative Affairs and the SBA Office of Advocacy, Information Division.

On March 5, 1991, the SBA coordinated its response with other Federal Agencies (notably the U.S. Department of Commerce and the Overseas Private Investment Corporation) under the auspices of the Trade Promotion Coordinating Committee, a Federal Inter-Agency Committee chaired by Commerce Secretary Mosbacher, which is taking the lead in the Administration's efforts to get information to U.S. businesses about Gulf Reconstruction. The SBA then issued a series of three notices (over the ensuing three weeks) to our field offices and members of the outreach community -- Small Business Development Centers, SCORE Volunteers and Small Business Institutes — regarding the process by which small businesses could learn about commercial opportunities.

The SBA Assistant Administrator for Financial Assistance and the Associate Administrator for Procurement Assistance Programs and the Director of International Trade held a telephone conference call with SBA's ten regional administrators to alert them to the Gulf reconstruction program. Information packets were distributed to them on Friday, March 8, 1991.

On March 8, 1991, the SBA also publicized the SBA Answer Desk phone number (1-800-U-ASK-SBA) and developed an information packet which was forwarded to interested businesses callers who had responded to the voicemail message. The SBA information packet contains an application to enroll on the Procurement Automated Source System (PASS). The Agency is urging small firms to fill out the PASS application form and enroll in the databank at no charge to the business. PASS is a computerized database that lists small businesses available for and interested in procurement opportunities. PASS is customarily used to help small businesses obtain contracts from the U.S. Government or U.S. Government contractors. In the current situation, PASS is being used to assist businesses in connecting with Gulf opportunities.

We have revised the PASS application form so that applicants may indicate their interest in doing business in the Gulf. Secondly, we are educating other Federal agencies and large prime contractors to make sure they know about and utilize the PASS system. In addition, the SBA Office of Procurement Assistance has offered to assign an SBA procurement specialist to respond to procurement related questions at the Department of Commerce Gulf Reconstruction Center. A procurement specialist has been assigned to the Office of Procurement Assistance to respond to procurement related questions regarding Kuwait.

Lastly, while the SBA does not have its normal procurement authority, SBA industrial specialists will serve as advocates on behalf of small businesses to the prime contractors. The SBA's Commercial Market Representatives (CMRs) will contact the prime contractors under their jurisdiction and offer them assistance in identifying small, small disadvantaged, and women-owned businesses. The SBA's Procurement Center Representatives (PCRs) will be given the names of the prime contractors selected for awards for dissemination to interested small firms. Lastly, the CMRs will offer prime contractors of Kuwait reconstruction contracts the names of small firms from the PASS System and other sources.

The SBA also instituted a marketing and public communications effort through the issuance of the press release to small business trade associations and to the media, urging small businesses to enroll in PASS. This effort was supported by the SBA Answer Desk and our field offices.

The SBA is aware that the process of reconstructing Kuwait and other damaged areas of the Gulf Region is changing rapidly in response to the information that reconstruction groups are learning about the damage. Our concern is to hold the interest of small businesses in doing business in the Gulf, where opportunities will abound over the next several years, while they experience short-term frustrations in trying to learn about trade and procurement opportunities. These opportunities are delayed due to the enormous importance of the damage assessment and emergency relief phase, but they will nonetheless be of significance to small firms interested in business opportunities in Kuwait.

DISASTER LOANS

QUESTION: Previously disaster loans were funded through a revolving fund which has had substantial balances for the past ten years. In addition, salaries and expenses in connection with disaster loan making were available through the use of indefinite transfer authority from the Disaster loan fund. Therefore the Agency had the flexibility to respond quickly to disasters throughout the country.

Under credit reform, advance appropriations must be made beginning in 1992 for specified levels of credit activity. Your 1992 request is based on historical averages of disaster loan demand. If, however, demand is higher than the appropriated level you would need to request a supplemental appropriation. This could be designated as an emergency, thereby exempt from the domestic discretionary budget caps; it could be offset from other appropriations; or we could simply deny the loans.

If demand for disaster loans is higher than available credit, what are your plans in 1992?

If demand is higher than anticipated, will you need additional personnel support? If so, will you request supplemental appropriations or reprogram funds within the agency?

ANSWER: If the demand for disaster assistance is abnormally high in FY 1992 due to major disasters, such as the hurricane and the earthquake in 1989, we would request a supplemental. This supplemental would most likely be exempt from the budget caps if the Congress appropriated sufficient budget authority to provide funding for a typical disaster year. We maintain a cadre of disaster staff that provides personnel support under "normal" disaster activity years. The extent of the devastation would be one of the major factors in determining whether we request a supplemental for disaster loans and for additional salary and expenses to fund additional personnel support. Under Credit Reform we will not have the use of available unobligated balances, as we have in the past.

WOMEN'S OUTREACH

QUESTION: In Fiscal Year 1991 the Congress provided $2 million for the Women's Outreach program. How are those funds being used during the current year?

ANSWER: In November 1990, the Office of Women's Business Ownership let a Request for Proposal (RFP) for the third cycle of the Women's Outreach Demonstration Project Program. More than 40 proposals were received by the deadline in late December. The Office of Women's Business Ownership is in the process of reviewing these proposals and selecting organizations to provide long-term training and counseling to women starting and expanding businesses.

In FY 1989 and FY 1990, $2 million was awarded each year. Currently there are 9 organizations operating 16 sites (as listed below) throughout the

United States. As a result of these programs, over 2,500 women have received training and counseling. Many of these sites have applied for further funding and are being considered. As in each of the preceding years, $2 million dollars will be awarded in FY 1991.

Organizations:

1. American Women's Economic Development Corp.
   New York, NY
   Other Sites: Los Angeles, CA
   Washington, DC

2. Chare/WEDCO
   St. Paul, MN
   Other Sites: Denver, CO
   Bemidji, MN
   Quad Cities (Moline
   and Rock Island, IL
   and Davenport and
   Bettendorf, IA)

3. Midwest Women Business Owners Development Team
   Detroit, MI
   Other Sites: Milwaukee, WI
   Detroit, MI

4. Women's Business Development Center
   Chicago, IL
   Other Sites: Joilet, IL
   Kankakee, IL
   Rockford, IL
   Indiana

5. The West Company
   Ukiah, CA

6. NAWBO of St. Louis
   St. Louis, MO

7. Women's Economic Self-Sufficiency Team
   (WESST Corp.)
   Albuquerque, NM

8. YWCA of Greater Atlanta
   Atlanta, GA

9. Southwest Resource Development
   San Antonio, TX

QUESTION: The 1992 budget request is proposing to double this funding to $4 million. What are your plans for the use of these funds?

ANSWER: Originally, Congress authorized $10 million dollars for this demonstration project program. Level funding of $2 million has allowed the program to continue, but not to grow to meet the demands. We have found that there is a critical need for this type of assistance for potential and current women entrepreneurs. As we review the success stories from the 1989 and 1990 projects, we can document how they fulfill the goals of the Women's Business Ownership Act of 1988 to help women business owners overcome barriers and contribute substantially to the local and national economy. In order to maximize these learning opportunities, we need to build on the success of the first years of the demonstration projects, strengthen existing programs, and replicate the skill-building methods in more communities throughout the country. It is clear that they need a minimum of three years of funding support to develop self-sufficiency in their communities. The $4 million will allow OWBO to sustain the existing programs until they are self-supporting, and replicate these centers in other areas around the country that need these centers.

QUESTION SUBMITTED BY SENATOR ROBERT W. KASTEN, JR.

SMALL BUSINESS DEVELOPMENT CENTERS

QUESTION: One of SBA's most successful outreach programs is its Small Business Development Centers. These centers have been a great source of advice and assistance for many American small businesses by helping them to create new products and to provide new jobs for the local economy. Wisconsin has eleven SBDCs -- all of which are administered through the University of Wisconsin system.

I am concerned with the deep cuts the Administration has proposed for this program. The proposed funding for 1992 is a decrease of $26 million dollars from 1991. This isn't the first year for such drastic cuts in the SBDC budget. Why does the Administration continually propose to scale-back this successful program, and how, from your point of view, does this make sense from a policy standpoint?

ANSWER: The Administration does not plan to "scale-back" the SBDC Program -- rather they are placing greater reliance on the SBDCs to coordinate such activities as counseling, training and other business development activities. At the same time, the Administration is seeking to obtain greater involvement of the state and local governments in the SBDC Program by recommending that the local sponsor provide $2 for every $1 invested by the Federal Government. It is anticipated that this increased non-Federal contribution will off-set the proposed reduction in Federal funding.

QUESTION SUBMITTED BY SENATOR ROBERT C. BYRD

Small Business Administration's (SBA) District Office in Clarksburg, and the Branch Office in Charleston, West Virginia

QUESTION: Last year, at my request, the Committee again included language in the report accompanying the FY 1991 Commerce, Justice, State Appropriation bill, directing that the Charleston, and Clarksburg, West Virginia offices of the SBA remain in operation at current levels. May I have your assurances that these offices will remain open at the current level in FY 1992? Please provide for the record the staffing and funding levels of these offices for the fiscal years 1991, 1992, and that projected for 1993.

ANSWER: The Clarksburg District and the Charleston Branch offices together currently have a staffing level of 32 employees and funding of $1.3 million for FY 1991. We estimate that the levels will remain the same for FY 1992 and 1993. This level of staffing and funding could change depending on the final appropriation for FY 1992 and 1993.

DEPARTMENT OF COMMERCE

ECONOMIC DEVELOPMENT ADMINISTRATION

STATEMENT OF L. JOYCE HAMPERS, ASSISTANT SECRETARY

ACCOMPANIED BY:

- **DOUGLAS ALLER, DEPUTY ASSISTANT SECRETARY FOR ECONOMIC DEVELOPMENT**
- **JOSEPH LEVINE, CHIEF COUNSEL**
- **HUGH FARMER, DEPUTY ASSISTANT SECRETARY FOR PROGRAM OPERATIONS**
- **RUTH KLEINFELD, DEPUTY ASSISTANT SECRETARY FOR PROGRAM SUPPORT**
- **VINCE GOODMAN, BUDGET OFFICER**

BUDGET REQUEST

Senator BUMPERS. I am going to forego my formal statement and welcome Secretary Hampers, Joyce Hampers, Assistant Secretary of Commerce for Economic Development. Welcome, Madam Secretary.

We are pleased to have you. In fiscal year 1991, Congress appropriated $236 million for EDA, of which $209 million was for planning and project grants, but the fiscal year 1992 budget requests only $20 million to terminate EDA and close out the agency's programs.

As you know, Secretary Hampers, that annual appropriation to close that program out is old hat to us. We have had that request for several years. We are very pleased to have you, and if you would like to introduce those who accompany you, we would be glad to know who they are and then we will proceed with your testimony and trust that you can summarize your testimony.

INTRODUCTION OF ASSOCIATES

Ms. HAMPERS. Yes; I will. Thank you, Senator. On my left is the Deputy Assistant Secretary for Economic Development, Mr. Douglas Aller; on his left is our Chief Counsel, Mr. Joseph Levine; on my right is Hugh Farmer, the Deputy Assistant Secretary for Program Operations; on his right is Deputy Assistant Secretary Ruth Kleinfeld who is in charge of Program Support; and our Budget Officer, Mr. Vince Goodman.

Senator BUMPERS. Welcome, all of you. Senator Rudman wants to welcome you.

Senator RUDMAN. I just want to welcome you as a New Hampshire resident to the hearing. I am going to leave you in the good hands of Senator Kasten and Senator Bumpers. I have some place I have to be at 11:15. I will have a couple of questions for the record, but they are questions which will be easily answered. I wanted to explain my absence and welcome you.

Ms. **HAMPERS.** Thank you, Senator Rudman.

Senator **BUMPERS.** Thank you very much, Warren. You may proceed, Madam Secretary.

OPENING STATEMENT

Ms. **HAMPERS.** I have submitted a statement for the record, but I will, with your indulgence, Mr. Chairman, just summarize that. I want to thank you for the opportunity to appear before you today to present the fiscal year 1992 budget request for the Economic Development Administration..

FISCAL YEAR 1992 BUDGET REQUEST

For 1992 the administration is proposing, as you said, Mr. Chairman, the phaseout of EDA. This phaseout would be conducted over a 5-year period to ensure protection of the Government's currently active grants, loans, and loan guarantees.

For the first year of phaseout, we are requesting $20 million to cover the costs of ongoing operations and administering the phaseout. This proposal is based on the belief that the problems of local economic development are best addressed by those closest to the problems, State and local governments, together with private investors.

FISCAL YEAR 1990 APPROPRIATION AND GRANT AWARDS

For fiscal year 1990, EDA was appropriated $25.475 million in administrative funds and $191.196 million in grant funds, and $150 million in loan guarantee authority.

EDA also received $2.924 million in supplemental grant funds of which $2.5 million was specifically designated for disaster assistance to tornado victims in the State of Kansas.

During fiscal year 1990, EDA awarded a total of 722 grants with a value of $189.959 million and two loan guarantees with a value of $2.335 million. In the agency's two principal programs, economic adjustment and public works, 200 grants were awarded with a total value of $135.156 million. In addition, 25 grants valued at $23.922 million provided disaster relief for the victims of the Loma Prieta Earthquake and Hurricane Hugo.

The fiscal 1991 appropriation provides $27.018 million in administrative funds, $209 million in grant funds, including $12.950 million for trade adjustment assistance, and $150 million in loan guarantee authority.

Eligibility and selection criteria remain the same in fiscal year 1991 as in fiscal year 1990. To date, some $50 million in grants have already been awarded. In addition, program reviews are underway which, when completed and implemented, I believe will improve the economic impact of EDA's assistance programs.

PROGRAM REVIEWS

For example, a university center task force has been formed to begin developing a system for evaluating the University Center Program. A principal objective is to identify options for revising, retaining, or abandoning the graduation policy.

In 1990, EDA awarded a grant to produce a study of its District Planning Program. Utilizing the results of this study, EDA has established an internal task force to examine the general issues and policies that govern the planning program with a view toward improving that program both procedurally and substantively.

EDA is also evaluating the effectiveness and performance of its Public Works Program. The study is a historical and statistical examination of the agency's impact on jobs, incomes, and investments.

Finally, EDA's revolving loan fund [RLF] task force will examine the partnership between EDA and its RLF grantees and solicit and consider comments from RLF operators, district organizations, and public interest groups. The objective of this task force is to increase the overall effectiveness of the RLF Program.

TOTAL QUALITY MANAGEMENT

Mr. Chairman, it is studies and evaluations like the four I have just described that are geared toward program improvements which form the nucleus of EDA's operational goal of total quality management or TQM. In essence, TQM is a process of continuous improvement which focuses the entire organization on satisfying all its customers, internal as well as external. Some of the tasks we have undertaken in the pursuit of this goal are: reducing grant processing time; decentralizing decisionmaking; establishing two national economic development representative positions; establishing a task force to review, revise, and update EDA's directives and operations handbooks; and conducting an agencywide TQM training program.

While philosophical differences may exist on economic development, I believe these efforts are evidence of my commitment to effectively manage this agency consistent with the intent of Congress and as mandated by law.

PREPARED STATEMENT

I will be happy to take any questions you may have. Thank you, Mr. Chairman.

[The statement follows:]

Statement of L. Joyce Hampers

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity, my first, to appear before you today to present the fiscal year 1992 budget request for the Economic Development Administration (EDA). I would also like to summarize the Agency's fiscal year 1990 accomplishments and fiscal year 1991 program operations to date.

FISCAL YEAR 1992 BUDGET REQUEST

While I will continue to strive to improve the federal management of EDA, our 1992 budget request reflects the belief of this Administration that investments in local economic development and the decisions surrounding these investments should be made at the local level by State and local governments. The financing should, therefore, come from the same people who are best able to make these decisions—State and local governments, working together with private investors. Since EDA was first authorized in 1965, over $13 billion have been awarded to fund various projects. While there is little doubt some of these projects were helpful and have had beneficial results in individual communities, federal budgetary constraints and the cumbersome problem of administering a national program of this kind can no longer be ignored.

Economic development and expansion at the federal level can be better addressed through the alternative adoption of the Administration's Enterprise Zones proposal.

Consistent with this proposal and the burden of an increasing federal deficit, the Administration is proposing the phaseout of EDA. This phaseout would be conducted over a five-year period to insure protection of the government's currently active grants, loans and loan guarantees. For the first year of phaseout, we are requesting $20 million to cover the costs of ongoing operations and administering the phaseout.

FISCAL YEAR 1990 APPROPRIATION

For fiscal year 1990, EDA was initially appropriated $25.475 million in administrative funds, $191.196 million in grant funds and $150 million in loan guarantee authority. Subsequent application of the Gramm-Rudman-Hollings Deficit Reduction Act reduced administrative funds by $0.119 million and the grant funds by $2.640 million. These reductions were applied uniformly across-the-board for each program and project. EDA also received $2.924 million in supplemental grant funds of which $2.500 million was specifically designated for disaster assistance to tornado victims in the State of Kansas; the remaining $0.424 million was for Economic Development District (EDD) grants. The latter amount enabled EDA to maintain the same level of funding for Districts in fiscal year 1990 as had been awarded in fiscal year 1989.

FISCAL YEAR 1990 AWARDS

During fiscal year 1990, EDA awarded a total of 722 grants with a value of $189.959 million and two loan guarantees with a value of $2.335 million. In the Agency's two principal programs, Economic Adjustment and Public Works, 200 grants were awarded with a total value of $135.156 million. The Economic Adjustment Program, which consists of Sudden and Severe Economic Dislocation (SSED) and Long-Term Economic Deterioration (LTED), awarded 29 SSED grants valued at $12.327 million and 22 LTED grants worth $12.031 million. Of the latter, $2.645 million was used to recapitalize eight existing Revolving Loan Funds (RLF's) and $6.025 million was directed toward the establishment of 15 new RLF's. In addition, 25 projects valued at $23.922 million provided disaster relief for the victims of the Loma Prieta Earthquake and Hurricane Hugo. Overall, the Economic Adjustment Program's distribution of funds was 73 percent in rural areas and 27 percent urban. In the Public Works Program, EDA awarded 149 grants with a value of $110.798 million. The average EDA participation rate was 44 percent. The rural/urban distribution of funds was 74/26.

EDA also awarded 113 Technical Assistance grants totaling $6.620 million of which 57, valued at $4.557 million, were for University Centers. Seven Research grants were awarded totaling $1.189 million, two of which were for evaluations of EDA's Public Works and District Planning programs. In the Planning Program, 377 grants were awarded with a total value of $23.072 million. Of these, 282 went to Districts, 56 went to Indian Tribes, 16 went to States, and 23 went to the Urban Program.

FISCAL YEAR 1991 PROGRAM OPERATIONS

Although the annual fiscal year 1991 appropriation was not enacted until November 5, 1990, EDA published its Federal Register announcement on December 20, 1990. In addition to including the newly transferred Trade Adjustment Assistance (TAA) Program, the Federal Register highlighted the fact that $4.724 million would be used for continuation grants for existing University Centers.

The fiscal year 1991 appropriation provides $27.018 million in administrative funds, $209 million in grant funds including $12.950 million for TAA, and $150 million in loan guarantee authority. Eligibility and selection criteria remain the same in fiscal year 1991 as in fiscal year 1990. To date, some $50 million in grants have been awarded.

PROGRAM REVIEWS

EDA is undertaking management reviews of several programs. A University Center task force has been formed—with membership consisting of headquarters staff, regional Planning/Technical Assistance Chiefs and staff, and Economic Development Representatives (EDR's)—to begin developing a system for evaluating the University Center Program. The evaluation to be developed will include revised guidelines for conducting on-site appraisals, revised annual report guidelines and guidelines for peer review by other University Centers. The group's first task is to prepare a formal University Center mission statement. A principal objective is to identify options for revising, retaining or abandoning the graduation policy. All interested parties will be contacted and invited to comment before any final policy is adopted.

Another area currently being reviewed is the Planning Program, with initial emphasis on the Economic Development District component. In 1990, EDA awarded a grant to the Kansas Center for Community Economic Development (KCCED) to produce a study of EDA's District Program. As part of the methodology of the study, KCCED met with and obtained input from individuals representing district directors, board members, state economic development officials, private sector affiliates, trade/professional associations and other interest groups. That study is now complete, and its conclusions have been transmitted to EDA. Utilizing the results of this study, EDA established an internal task force to examine the general issues and policies that govern the Planning Program. The performance of individual grantees will not be considered. The scope of the review is to address the mission and purpose of planning grantees, evaluation criteria, and substantive factors EDA should consider in determining funding levels for planning grantees. The task force will develop a final report by the end of fiscal year 1991. Planning District grantees will be afforded the opportunity to provide input to the work of the task force.

EDA is also currently evaluating the effectiveness and performance of its Public Works Program. The study is a historical and statistical examination of EDA's impact on jobs, incomes and investments. A final report will contain an analysis of the factors and characteristics of successful public works projects, as well as recommendations for the design and operation of a cost-effective Public Works Program.

Finally, EDA's recently established Revolving Loan Fund (RLF) Task Force represents a significant opportunity to revitalize and advance the partnership between the Agency and its RLF grantees, thereby improving the effectiveness of the EDA RLF as an economic development tool. The Task Force is reviewing EDA RLF policy within the external constraints on the Agency such as statutory authority and Federal common-rule principles and requirements. Comprised of 10 EDA staff members representing a cross section of EDA disciplines, individual backgrounds, and all six regional offices, the Task Force draws from over 186 years of collective experience in varied fields of economic development. Nonetheless, the Task Force process involves soliciting and considering comments from RLF operators, EDA district organizations, public interest groups and other economic development practitioners. Comments, suggestions and recommendations on how to improve EDA/grantee RLF partnerships were invited from over 800 groups and individuals. The Task Force will evaluate the comments received prior to making any recommendations. A final report of recommendations is expected in late Spring of 1991, and it is conceivable that certain issues will warrant continued follow up.

TOTAL QUALITY MANAGEMENT

Mr. Chairman, it is studies and evaluations like the four I have just described that are geared toward program improvements which form the nucleus of EDA's operational goal of Total Quality Management (TQM). In essence, TQM is "a process of continuous improvement which focuses the entire organization on satisfying all its customers, internal as well as external." Some of the tasks we have undertaken in pursuit of this goal are: Reducing grant processing time; decentralizing decision-making with increased authority being delegated to regional personnel who are closest to the problems and their solutions; establishing two National Economic Development Representative positions to insure uninterrupted, continuous local coverage and to develop a network linkage of information dissemination and policy coordination among EDR's, regional offices and headquarters; establishing a task force to review, revise and update EDA's directives and operations handbooks; and conducting an agencywide TQM training program with total management/staff participation.

I believe these efforts are evidence of my commitment to manage this Agency consistent with the intent of Congress and as mandated by law.

Mr. Chairman, that concludes my prepared statement. Since this is my first appearance before the Subcommittee, I would like, with your permission, to introduce my staff.

Douglas Aller, Deputy Assistant Secretary for Economic Development.
Hugh Farmer, Deputy Assistant Secretary for Program Operations.
Ruth Kleinfeld, Deputy Assistant Secretary for Program Support.
Joseph Levine, Chief Counsel.
Vince Goodman, Budget Officer.

Thank you, Mr. Chairman.

LOAN GUARANTEE PROGRAM

Senator **BUMPERS**. Thank you very much. Madam Secretary, I have a whole host of questions I will submit to you in writing. I just want to say, of course, as you know, as long as Senator Hollings is chairman of this subcommittee, terminating EDA is not likely to happen. But why did you only make two guaranteed loans last year?

Ms. **HAMPERS**. That was all that we had that fit the criteria of the program. We are trying very hard to utilize the Loan Guarantee Program to its fullest extent. We find that the problem is that we, of course, have to have some reasonable assurance that there is some repayment ability. That is difficult, at best, and so our doors are not being broken down by applicants in this area.

It is very difficult to find applicants who have some likelihood of repayment but at the same time are in the position where they cannot get financing through conventional means. So it is sort of whichever way you look, you are in trouble because you don't want to take people who could get financing otherwise and, consequently, of course, you are looking at a pool of people that are not that creditworthy. So it is a difficult thing.

GRANT PROGRAMS

Senator **BUMPERS**. What was the average size of EDA's grants? You said you made 700 and some grants last year.

Ms. **HAMPERS**. Altogether we made 722.

Senator **BUMPERS**. What was the average size?

Ms. **HAMPERS**. That number includes our planning grants.

Senator **BUMPERS**. Planning grants?

Ms. **HAMPERS**. Planning grants, and if you exclude those and look in terms of the public works grants, which is, obviously, our biggest area.

Senator **BUMPERS**. That is $140 million?

Ms. **HAMPERS**. Yes; they generally were around $700,000, as the average in the public works area.

TITLE V COMMISSIONS

Senator **BUMPERS**. I will just make this statement: When I was Governor, we had all these regional commissions. I don't know whether you remember the title V commissions or not, but we had one in Arkansas. It was our regional commission, and the Governor of Arkansas had, I forget; it seemed to me like I had about $2 million. I, frankly, thought it was sort of an abuse just to send the Governor of Arkansas $2 million and say, "Use this for whatever political purposes you want," which I happily did. [Laughter.]

Ms. **HAMPERS**. You didn't turn it down, right?

Senator **BUMPERS**. But as I look back on a lot of the projects we have funded, for example, we have a community in Arkansas, Okolona, which, I believe, is all black. They were desperate for water and sewer grants down there. And because of their poverty and because of their lack of ability to repay any kind of a loan, it was just impossible for them to ever get it. But I can remember being able to take, maybe, $100,000 from that Ozarks Regional Commission fund and give them that, and it was designed for economic development, but the truth of the matter is, I knew it, the commission knew it, everybody knew it. We were just trying to help people help themselves enjoy life a little bit more by simply giving them a water and sewer system.

The reason I mention that is because Saturday night, I spoke to a chamber of commerce back in Arkadelphia, AR, a small town of about 10,000 people. They have two universities there. And this elderly man came up to me and said, "Senator, I will never forget what you did for Okalona," and it just reminded me, that small amount of money that I was able to give them when I was Governor to get them the quality of life that they had never known and would never have known.

Here we are talking about economic development. I can tell you in a State like mine that is rural, quite often, people who are developing industrial parks who have a real, live industrial prospect, they have an industrial park, but they don't have a sewer system for it or they don't have an adequate amount of water. EDA was designed, of course, to tail out those things, to put people over the top. I mean, they can make a monumental effort, but they always lack just a little, maybe $100,000, maybe $200,000, whatever it is.

JOBS CREATED IN FISCAL YEAR 1990

Do you have a statistic on how many jobs were created or how many you anticipate creating with those roughly $140 million in bricks and mortar grants?

Ms. HAMPERS. Are you talking about fiscal year 1990?

Senator BUMPERS. 1990.

Ms. HAMPERS. All we would have at this point, as you can understand, Senator, is grants that were awarded in fiscal year 1990 some of which are still under construction or just getting underway. So all we would have is the estimate of what was projected at the time we awarded the grant.

Senator BUMPERS. What was that?

Ms. HAMPERS. I don't know what the total would be.

Mr. GOODMAN. Approximately 39,000 long-term jobs.

Ms. HAMPERS. The projections would be in the economic adjustment area.

Mr. GOODMAN. In public works.

Senator BUMPERS. How does that translate into dollars per job? Do you know that?

Mr. GOODMAN. This particular case is about $2,800 per job for public works projects.

Ms. HAMPERS. Of course, these are estimates. This is one of the things that we are doing now with this public works study, going back 5 or 6 years and looking to see what really happened, because sometimes the estimates don't accord with what actually happened, and sometimes the actual is better than what the estimates were.

So we are going to try to find out what kinds of qualities, factors, and characteristics went into those projects that turned out to be successful as opposed to those that didn't so that we can get some guidance.

[The information follows:]

Economic Development Administration fiscal year 1990 public works job/financial statistics

[Dollar amounts in thousands]

Project total	$248,917
EDA	$109,798
Applicant	$98,571
Other	$40,548
Estimated number of jobs created	38,731
Private sector investment	$1,436,216

Senator BUMPERS. You know, sometimes I think I am just going to join the administration. Senator Hollings and I have always been staunch defenders of this program, and we kept it alive since the day Ronald Reagan was inaugurated. He wanted to kill it; George Bush wants to kill it; and Senator Hollings and I on this side, mostly Senator Hollings, because of his position as chairman of this subcommittee, have been able to keep EDA going. I make no apologies for it, because I don't understand how the administration can be so inconsistent. When I think about what the United Nations does for these same kinds of programs that we contribute to and when I think about all of our foreign aid programs, I mean, why is a water and sewer project in Africa good, but not good here?

I would hate to have to explain to the people of my State why we are spending billions of dollars in foreign aid to help people do precisely these kinds of things, and we can't even afford to keep one small project, which is so important, especially in rural areas of America where they just simply cannot do it otherwise. Well, I don't want to get preachy about it, but I just feel strongly that it is a required program.

Senator Kasten?

Senator KASTEN. Mr. Chairman, thank you. I want to join you in welcoming the Assistant Secretary to the subcommittee. I want to associate myself with your views. I think this is a program that has had strong bipartisan support. I know Senator Rudman has been working hand in hand with Senator Hollings. Those of us who are members of this subcommittee want to keep this going. I want to associate myself with your views, and I think we are going to continue to work with EDA.

Senator BUMPERS. Thank you very much.

EAU CLAIRE FUNDING

Senator KASTEN. I really don't have a question, except I want to make a comment. I just want to thank you and your staff. We had a meeting just last week for this assistance that you have provided to us on an emergency basis for Eau Claire, where we have a crisis.

As you know, we had money that was appropriated or that was granted. Then we had to go through a reprogramming. We have now got the money reprogrammed, so those EDA Funds for Eau Claire for the Uniroyal Tire Co. are now, once more, at least, available to be used. I thank you for that. Now the question: Are we going to be able, working together, to meet this June 15 deadline that we have got? I am optimistic that we can. Do you share my optimism?

Ms. HAMPERS. I do at this point, yes. I don't see any reason why we can't. We are moving full speed ahead, and I think that the city has done or is doing what it has been called upon to do. They are doing everything they can as quickly as they can. I don't see any obstacles at this point.

Senator KASTEN. As you know, we are monitoring this on almost a daily basis.

Ms. HAMPERS. We have been doing the same thing.

Senator KASTEN. I really want to say thank you, and thank you to the staff and everyone has been very, very helpful.

ADDITIONAL COMMITTEE QUESTIONS

I have got a couple of other questions, Mr. Chairman, I might want to put in the record, but thank you very much.

Senator BUMPERS. Secretary Hampers, thank you, and thank you all very much for your assistance.

Ms. HAMPERS. Thank you, Mr. Chairman.

Senator KASTEN. I appreciate your help and flexibility.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Policy Review

QUESTION:

In 1980, EDA's budget was $532 million. In 1991, the Congress appropriated $236 million. So in real or nominal dollar terms, it is clear that the Administration has succeeded in significantly cutting EDA.

Ever since David Stockman took over at OMB, every Reagan or Bush Budget has proposed eliminating EDA.

Since you took over EDA, has Secretary Mosbacher conducted a serious policy review to determine if elimination of EDA still makes sense?

ANSWER:

Both before and since my confirmation as Assistant Secretary for Economic Development, regular policy reviews are held with Secretary Mosbacher. Although helpful in fine-tuning the operational goals and procedures of continuing EDA, these reviews have not resulted in a change of the Administration's overall policy to promote economic development.

QUESTION:

Given that we are in a severe economic downturn, is there any consideration of using EDA as a counter-recessional device to put people back to work? In the 1970's we used the Local Public Works Program to create jobs and build needed infrastructure.

ANSWER:

Countercyclical programs, such as the Local Public Works program: 1) tend to aggravate the business cycle by applying most of their stimulus after economic contraction is over and the economy is expanding, thus fueling inflation; 2) provide only minor local employment benefits; and 3) provide little net job creation when offsets are considered. A 1979 study of countercyclical public works programs indicates that delays in program timing (attributed to legislative, administrative, and implementation delays) have made them "procyclical" rather than countercyclical. In view of these facts, the Administration is opposed to legislation similar to that enacted in 1976 and 1977.

Inconsistent Administration Policies

QUESTION:

Ms. Secretary, the Administration's Budget states that economic development should be a state and local role.

But, the Administration's policy does not seem very consistent.

And in the International Affairs Budget we are funding plenty of water and sewer projects, and industrial parks--overseas. Through the State Department we fund the U. N. Industrial Development Agency which provides planning and project grants that sound just like EDA's.

The bottom line is that the Bush Budget says that a water and sewer project in Africa is good, but one in the United States is bad.

Why is the Budget so inconsistent? Why do you believe taxpayers in Arkansas should be asked to assist Economic Development overseas, but not in the U.S.A?

ANSWER:

As opposed to being inconsistent, the President's Budget presents different methodologies in the achievement of local economic development as compared to that overseas. The Administration does not maintain that local economic development projects are bad, nor that they should not be supported by taxpayers. It is the belief of this Administration that the decisions surrounding local economic development activities are more appropriately and effectively made at the state and local levels. Local economic development and expansion at the federal level can be better addressed through the alternative adoption of the Administration's Enterprise Zones proposal. Further, continuous economic development is contingent upon fiscal stability, which will result from a reduced federal deficit. The elimination of EDA will save taxpayers an estimated $1.18 billion through 1996, the last year of the proposed phase-out.

Secretary Hamper's Goals for EDA

QUESTION:

Two weeks ago Secretary Mosbacher testified to this Committee that "We aren't requesting EDA funding, but we are expecting to receive it."

Given the likelihood that Congress will not be willing to terminate EDA, what are your goals for the Agency in FY 1992?

ANSWER:

In the event that EDA is appropriated funds in FY 1992, I will continue to manage the Agency consistent with the intent of Congress and as mandated by law. I will also continue the reviews of EDA programs begun in FY 1991. In furtherance of these objectives, I have established several Quality Action Teams with the aim of improving the effectiveness and efficiency of our programs. These teams are reviewing programs relating to Title IX

Revolving Loan Fund, University Centers, Planning Districts, and are revising and updating EDA regulations and directives. By enhancing the delivery of our product to the taxpayer, and involving our employees in the Agency's decision-making process, these activities will also allow me to continue to strive towards my goal of Total Quality Management at EDA.

QUESTION:

How can you instill a "Total Quality Management" partnership between EDA management and employees--as you suggested in your opening statement--if the employees know that management is intent on laying them off?

ANSWER:

It could be argued that Total Quality Management (TQM) and the culture it supports offers great promise for organizations in all life-cycle stages, even impending layoffs. In the case of EDA, the reality is that management expects to operate in FY 1992 at the FY 1991 level pursuant to anticipated Congressional appropriations, and EDA employees are well aware of the situation. As long as EDA is funded, I am committed to the TQM orientation of providing quality services to all our customers. Moreover, I believe that the values represented by TQM are fully congruent with the Administration's view that economic development can be best performed at the local level.

QUESTION:

EDA always has been torn between small town rural needs and urban needs. How do you view this issue? Should EDA be primarily oriented to rural areas? What is the breakdown between rural and urban for your 1990 and 1991 project grants?

ANSWER:

Historically, EDA has been primarily oriented towards rural areas. We believe this orientation is a wiser use of our appropriation, giving us "more bang for the buck."

In FY 1990, the rural/urban percentage of distribution for funds in the Public Works Program was 74/26. In the Economic Adjustment Program, the percentage of distribution was 73/27. Through the first six months of FY 1991, the distribution is 87/13 for Public Works and 82/18 for Economic Adjustment.

Raiding EDA Research and Development

QUESTION:

In fiscal year 1991 the Congress appropriated $1.2 million for Economic Development research and evaluation.

We understand, however, that the Commerce Department has been directing that these funds go to areas unrelated to EDA's legislative mandate. For example, EDA is diverting $400 thousand, a third of this appropriation, to an International Trade Administration Project called "Japan Export Promotion." Another $100 thousand has been allocated for a "Global Warming Analysis" study.

Secretary Hampers, have these EDA funds been used for the projects that I mentioned?

ANSWER:

The aforementioned projects were funded in FY 1990 consistent with Section 301(c) of the Public Works and Economic Development Act of 1965, as amended (P.L. 89-136).

QUESTION:

Since these funds are not being used for the purposes they were appropriated for, why hasn't the Department submitted a reprogramming?

ANSWER:

The Department did not submit a reprogramming request as the funds were used for the purposes for which they were appropriated. The enhancement of the export capability of U.S. businesses, and the encouragement of U.S. businesses to begin or increase exporting, are clearly an important part of EDA's mission to promote economic development. Furthermore, Section 301(c) of P.L. 89-136 states "The program of study, training and research may be conducted by the Secretary through members of his staff, through payment of funds authorized for this section to other departments or agencies of the Federal Government...." Thus, the purpose(s) of these projects were within EDA's legislative mandate.

Economic Development Representatives (EDR's)

QUESTION:

Ms. Secretary, EDA is one of the few Federal grant programs that enables the Federal Government to directly address local economic problems. Sometimes, as is the case of Defense base closures, with problems created by the Federal Government.

It seems that this type of direct Federal grant system requires EDA to have people on the ground that understand the local problems and can evaluate the projects. EDA has such people in its corps of Economic Development Representatives.

You have met with many of the State EDR's since assuming your position. What is your assessment of their capabilities and dedication? What would happen if Congress appropriated funds for EDA in FY 1992, but we dropped our annual bill language that requires Economic Development Representative positions to be maintained?

ANSWER:

I have been greatly impressed with the knowledge and dedication of our cadre of Economic Development Representatives. I made it a point to meet with them early in my tenure, and I was pleased to receive interesting, highly professional and informative briefings on the areas each represents. If the statutory mandate to maintain EDR positions were dropped, we would try to use to best advantage the managerial flexibility that such a change in the language would afford us to match resources and requirements. However, the basic concept of relying on a local presence would remain in place to insure maximum geographic representation.

QUESTION:

What is the status of your two "National" EDR positions? How will they relate to or work with your State EDR's?

ANSWER:

The Senior National EDR has come aboard, and the second position is currently being advertised.

To support the mission of EDA, the National EDRs will serve in several capacities. First, they will be available to provide temporary staffing as "floating" EDRs in the field, in cases of vacancy, incapacity or unusual demand, such as in the event of natural disasters. Secondly, they will undertake special projects crosscutting regions, programs, or disciplines, aimed at such program improvements as reduced cycle-time for processing grant applications. They will also develop and oversee an extended post-approval project monitoring process. Finally, the National EDRs will provide additional functional support through headquarters and the regional offices to the EDRs assigned to particular locations to facilitate the rapid consideration, development and dissemination of ideas related to the Agency's performance between and among headquarters and field staff.

These positions will enable EDA to maintain continuous coverage in the field and to enhance the role of all Economic Development Representatives in providing quality service to EDA's customers.

Defense Economic Adjustment

QUESTION:

In FY 1991, the Congress appropriated $200 million for Defense Economic Adjustment. Fifty million dollars of this amount was to be transferred to EDA.

What is the status of this funding?

ANSWER:

The funds, in accordance with the language of the enacted appropriation, are currently held by the Department of Defense (DOD). As a consequence, the authority and responsibility for any transfer of those funds to EDA remain with DOD.

QUESTION:

Have you reviewed many of these defense contractor cutback adjustment issues--such as the A-12 impact in St. Louis?

ANSWER:

EDA is currently considering several proposals in response to the impacts of anticipated defense contractor cutbacks. Included are proposals related to defense aerospace decline in the greater Los Angeles area, cutback of submarine, other naval shipbuilding activity and defense aircraft production in New England, and the combined impact of cutting back defense aircraft and civilian automotive production in the St. Louis area.

On September 28, 1990, EDA funded a technical assistance grant to the National Governors' Association to study the effects of defense contract cutbacks at the state level. On March 1, 1991, a grant was awarded to the National League of Cities Institute to study the effects on local communities.

QUESTION:

Back in the 1960's and 1970's, EDA was the cornerstone in the Interagency Defense Economic Adjustment Committee--but that was before the Administration decided to propose termination.

How does EDA participate in the Economic Adjustment Committee now? Are any Title IX funds allocated for Defense base closures and contractor cutbacks? If so, how much?

ANSWER:

EDA, through its consideration of funding of defense adjustment related proposals, coordinates most closely with the Department of Defense (DOD), Office of Economic

Adjustment. DOD provides the permanent staff of the interagency committee. EDA and DOD recently updated its existing Memorandum of Agreement which emphasizes communication and a coordinated response in the event either one or both agencies are approached with a defense-related proposal.

EDA does not allocate any of its regular, annual Title IX funds specifically for defense-related dislocations. Such proposals are eligible to compete for EDA funds on the same basis as proposals triggered by other economic dislocation events.

QUESTION:

Do you believe that the Administration's articulated policy for shutting down EDA--that the State and locals should fund economic development--pertains in cases when the local economic hardship has been caused by a Federal action? For example, in the case of a base closure?

ANSWER:

EDA's programs currently work in conjunction with local, state and other Federal agency programs in addressing economic hardship caused by Federal actions. In each case, it is the local citizens and officials who possess the ideas and community will necessary to develop effective strategies capable of responding to such events. While EDA occasionally assists with financing of this local process, EDA's funds do not "solve" the problem. Similarly, EDA may participate in funding of one or more elements to implement a strategy, but almost always in conjunction with funding from state or local sources.

EDA Loan Guarantees

QUESTION:

Every year Congress provides EDA with $150 million in Revolving Loan Guarantee authority. But, EDA makes few, if any, guarantees.

The Budget requests no subsidies for EDA loan guarantees. I hope you realize that under the New Budget Agreement, if we don't appropriate funds for subsidies, you are going to get your wish--EDA will not be able to make any Loan Guarantees.

Do you have an estimate of how much you are going to guarantee this year?

ANSWER:

We currently estimate that EDA will issue guarantees in the range of $10 to $20 million.

Business Center Duplication

QUESTION:

Our staff advises that in the field there appears to be little coordination between SBA Small Business Development Centers, EDA Economic Development Centers and MBDA Minority Business Development Centers. These activities often exist in the same cities.

What is your assessment? What actions do you take at Headquarters to reduce duplication with these other technical assistance resources?

ANSWER:

In the early 1980s, there was considerable overlap between University Centers, Minority Business Development Centers (MBDC), and Small Business Development Centers (SBDC). Since Trade Adjustment Assistance Centers worked in multi-state areas and only with firms that were facing competition from imports, there was very little overlap. Many institutions seeking to participate in the University Center program were primarily interested in providing technical assistance in management counseling to small and or minority businesses. Institutions interested in providing this type of assistance were required to obtain letters from any SBDC or MBDC serving the same area indicating that the proposed University Center activities would not duplicate their services.

For several years, EDA has declined to invite applications from institutions seeking to establish new University Centers that would focus their economic development assistance programs on management counseling to small and minority businesses. The majority of the University Centers established in the last few years have focused their technical assistance outreach efforts to the economic development planning and research needs of nonprofit and public sector organizations. New University Centers have also been established that provide assistance to small and minority businesses, but in the area of technology transfer and other engineering/technical assistance to resolve problems in manufacturing or processing systems as opposed to general management counseling activities such as loan packaging, market research, and business plan preparation.

This approach by EDA in establishing new University Centers has greatly reduced the potential for duplicating services provided by SBDCs and MBDCs.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

University Centers

QUESTION:

For the past several years the Economic Development Administration has proposed to "graduate" university centers from the University Center program. The criteria for graduation was based on the length of participation in the program--not on the relative merits of each center.

The University of New Hampshire Center has long been recognized, even by EDA, as one of the best centers in the country. However, it was proposed for termination.

In the 1991 Appropriations Bill we suspended the termination policy by requiring minimum funding for all centers currently in the program. What is your current policy on the graduation of University Centers. If we removed this prohibition from the 1992 Appropriations Bill, would you reinstate the Graduation Policy?

ANSWER:

An internal EDA University Center Task Force, with representation from all EDA Regional Offices and from Washington, has been established to develop the program policy for the University Center program. The initial meeting of the Task Force was held on January 29 and 30. Among the issues the Task Force has decided to examine are the mission of the program, the graduation policy, and criteria for evaluating performance. Until I have an opportunity to review the recommendations of the Task Force, I cannot say whether EDA would reinstate the graduation policy in FY 1992 if the restrictive language was removed from the appropriations bill.

From my review of the policy and my discussions with University Centers directors, it is generally known that I believe the graduation policy may have been unnecessarily restrictive in placing a seven-year limit on participation in the program. Clearly, other factors such as the performance of the Center, the financial and nonfinancial support of the sponsoring institution for the work of the Center, the distress of the area served by the Center, and the presence of other institutions in the state interested in establishing an economic development technical assistance program should be given some weight in this policy.

While the Task Force has not set a definite date for concluding its work, draft recommendations should be completed by late Summer. However, you may be assured that I will carefully review the Task Force recommendations in deciding the policy for the University Center Program.

EDA Guaranteed Loans

QUESTION:

For a number of years the Congress has provided EDA with the authority to guarantee up to $150 million in business loans. However, my understanding is that EDA has made very few loans in the past few years. Why is that?

ANSWER:

EDA has traditionally been a lender of last resort taking higher than normal credit risks, including subordinated collateral positions. Government-wide credit reform in the 1980's set minimum standards for extending credit. These standards prevent EDA from taking subordinated collateral positions. Additionally, EDA does not provide assistance when issuance of a guarantee would constitute a substitution of credit that is otherwise available from other federal agencies or private sources. These factors have defined a limited role for the Agency in guaranteed lending. In view of the serious delinquency rates the Agency has experienced, we believe that these restrictions are appropriate.

QUESTION:

If Congress were to continue to provide this authority, it would require an appropriation in fiscal year 1992. What appropriation would be required to provide $150 million in guarantee authority?

ANSWER:

With regard to appropriation of funds, EDA has sufficient funds in its Revolving Fund to guarantee loans up to the anticipated program level of $10 to $20 million.

QUESTION SUBMITTED BY SENATOR ROBERT C. BYRD

Economic Development Assistance Programs

QUESTION:

The Fiscal Year 1992 President's Budget proposes to again eliminate the Economic Development Assistance Program (EDA). Last year the Committee recommended an appropriation of $204,430,000, an increase of $1,050,000 above the appropriation for fiscal year 1990. The amount recommended is an increase of $190,030,000 over the House level and $204,430,000 over the amount requested.

As a follow-up, on November 28, 1990, I wrote to Secretary Robert A. Mosbacher on this matter and his response to me of January 9, 1991, indicated that the Economic Development Administration programs will be maintained in FY 1991 at the FY 1990 operating levels. Please provide, for the record, a list of projects funded in West Virginia in FY 1989 and FY 1990 and prospects for FY 1991?

ANSWER:

A list of West Virginia projects for FY 1989 and FY 1990 and projects approved to date for FY 1991 follow. For the record, all planning continuation grants will be funded at their FY 1989 level. However, it is not possible to speculate on which other grants may be approved during the remainder of FY 1991 as applications from West Virginia are in competition with those received nationwide.

GRANT AWARDS IN THE STATE OF WEST VIRGINIA
FY 1989 TO PRESENT
(In Thousands of Dollars)

CITY	APPLICANT	AMOUNT	DESCRIPTION
1989:			
Buckhannon	Reg 7 PDC	$50	Plng Continuation Grant
Clarksburg	Clarksburg	1,468	Adjustment Implement
Dunbar	BCK Reg Intergov	55	Plng Continuation Grant
Fairmont	Region VI PDC	50	Continuation Grant
Huntington	Marshall Univ	75	University Center
Huntington	Region II PDC	50	301b Planning Grant
Martinsburg	East Panhandle RPDC	50	Plng Continuation Grant
Morgantown	West Virginia Univ	200	Discovery Lab
Paden City	City of Paden City	25	Adjustment Strategy
Parkersburg	Mid-Ohio Valley RPDC	50	Plng Continuation Grant
Pennsboro	Pennsboro IPDA	237	Industrial Park Expans.
Petersburg	Reg 8 PDC	$55	Plng Continuation Grant
Philippi	Alderson Broaddus Coll	432	High Tech Center
Princeton	Reg I PDC	48	Plng Continuation Grant
Romney	Hampshire County ID	23	Adjustment Strategy
Scott Depot	South Putnam PSD	1,000	Reservoir
Summersville	Reg 4 PDC	50	Plng Continuation Grant
Weirton	BMJ Metro Plng Comm	40	Initial Plng Area Asst
Wheeling	Bel-O-Mar Reg Coun 10	45	Plng Continuation Grant
Wheeling	Wheeling Coll, Inc.	200	Software Enterprise Ctr
	TOTAL, FY 1989	4,203	

(In Thousands of Dollars)

CITY	APPLICANT	AMOUNT	DESCRIPTION
1990:			
Bridgeport	Benedum AirP Auth	1,150	Airport Development
Buckhannon	Region VII PDC	60	Plng Continuation Grant
Charleston	State of WV GOCID	147	Education Linkage
Dunbar	BCKP Reg Intergov	55	Plng Continuation Grant
Fairmont	Region VI PDC	55	Plng Continuation Grant
Grafton	Taylor County/WVDOT	350	Industrial Park
Huntington	Marshall University	50	University Center Cont
Huntington	Marshall University	197	Flex Manufacturing Sys
Huntington	Region II PDC	55	301b Planning Grant
Martinsburg	East Panhandle RPD.C	50	Plng Continuation Grant
Montgomery	WV Institute of Tech	100	University Center
Parkersburg	Mid-Ohio Valley RPDC	55	Plng Continuation Grant
Petersburg	Grant County Comm	24	Adjustment Strategy
Petersburg	Reg 8 PDC	55	Plng Continuation Grant
Princeton	Mercer County CDA	588	Multi-use Indust. Bldg
Princeton	Reg 1 PDC	55	Plng Continuation Grant
Summersville	Reg 4 PDC	55	Plng Continuation Grant
Weirton	BMJ Metro Plng Comm	40	Initial Area Plng Asst
Wheeling	Bel-O-Mar Reg Coun 10	45	Plng Continuation Grant
	TOTAL, FY 1990	3,186	
1991:			
Buckhannon	Region VII PDC	60	Plng Continuation Grant
Parkersburg	Mid-Ohio Valley RPDC	50	Plng Continuation Grant
Princeton	Region I PDC	500	Capitalize a RLF
	TOTAL, 03/31/91	610	

MINORITY BUSINESS DEVELOPMENT AGENCY

STATEMENT OF JOE LIRA, DIRECTOR

PREPARED STATEMENT

Senator BUMPERS. Mr. Lira, welcome. We will next hear from Mr. Joe Lira, Director of the Minority Business Development Agency. He has previously served as Deputy Director, and he has been with MBDA since May 1990.

For fiscal year 1992, the President is requesting $43.1 million. That is $2.5 million above current appropriations. Mr. Lira, thank you very much. Your full statement will be included in the record. Please proceed.

[The statement follows:]

STATEMENT OF JOE LIRA

Mr. Chairman and Members of the Committee: As the Director of the Minority Business Development Agency (MBDA), I will address this Subcommittee and present our fiscal year 1992 budget request for $43,078,000, an increase of $1.5 million over the fiscal year 1992 base. It includes $37,230,000 for Enterprise Development, $3,125,000 for our Resource Development activity and $2,723,000 for Advocacy, Research and Information. With me today is my Executive staff I will inform the Members of this Subcommittee on MBDA's activities since our last budget request presentation. I will also discuss several of the new initiatives that we have undertaken to strengthen minority business enterprise.

I can assure you that we are not only addressing, but remedying through corrective measures, the concerns that have been identified by the Office of Inspector General and the General Accounting Office regarding certain MBDA programs and management practices. We have strengthened our communications with the Office of Inspector General through regularly scheduled meetings in order to be apprised in a timely manner of any required corrective actions.

Our priority goals and objectives are therefore to establish a quality conscious business environment, streamline operations and enhance MBDA's capacity to fully utilize both its financial and human resources. In doing so, our capacity to expand business opportunities for minority firms can only be strengthened.

The strategy that we propose will demonstrate the vision necessary to fill the President's and the Secretary of Commerce's commitment for minority business to not only enter America's economic mainstream but more importantly to continue contributing to its competitiveness and economic security. For example, the 1987 Census indicates that the number of Black-owned firms increased 38 percent from 308,260 in 1982 to 424,165. Gross receipts also increased 105 percent from $9.6 billion to $19.8 billion. Collectively, black firms employ approximately 225,000 and are principally located within the inner cities of America.

Let me share with you some of the organizational management initiatives that we are undertaking. In November, the Agency began the first phase of an organizational restructuring and realignment to both consolidate and maximize efficient utilization of personnel. Guided by recommendations from the KPMG Peat Marwick Consultant Study, MBDA is making major enhancements to the Minority Business Development Center delivery system; strengthening the grants award processing cycle; resolving MBDA's long outstanding debts; and establishing an effective monitoring system which will enhance the credibility of business services provided nationally on behalf of minority businesses through the MBDC program.

Notwithstanding the impact which MBDA's Minority Business Development Centers have had on minority business, MBDA is redirecting its resources. This will strengthen the business development centers' capacity to assist minority firms in traditional, as well as nontraditional business areas. This includes reestablishing support for the Minority Business Opportunity Committees of the Federal Executive Boards to strengthen Federal contracting opportunities at the regional level. Additionally, we will pursue a redirected strategy through the implementation of national programs such as franchising, tourism, telecommunications, and international trade. These initiatives will be considered for funding through a planned competitive process. These national programs will be developed through planned strategies guided by established research studies. These national initiatives allow for minority firms to access high business growth opportunities through the full utilization of our Client Service Delivery System, thus complementing an already existing support service mechanism.

We plan to leverage surety bond resources to enhance MBE capabilities to compete for contracts. Alternative capital resources will be explored to develop and finance new MBE formations and expansions. New opportunities for MBE's to export products and services in international trade are also being identified.

It is MBDA's responsibility to reestablish its leadership role as defined under Executive Orders 11625 and 12432. Federal agencies must do more for minority entrepreneurs and so must MBDA. We will increase the ability of the Offices of Small and Disadvantaged Business Utilization (OSDBU's), as well as the Small Business Administration, to access existing programs and accomplish legislated goals. We have called for a joint MBDA/SBA Council to efficiently coordinate resources. For example, MBDA will use agency annual minority forecast plans for procurements, mandated under Public Law 100–656, and revise the collection form used for reporting minority goals and quarterly status reports to better analyze what each agency has accomplished. We believe this will strengthen the agencies' capacity to accomplish their stated procurement goals and objectives.

We have redirected attention to the needs of the Native American business community by coordinating Federal programs for Indian assistance. I presently serve as Secretary Mosbacher's representative on the Native American Coordinating Council of the Veterans Affairs Administration for Indian Affairs. MBDA is meeting with other Federal agencies to explore new areas of Agreements and Memoranda of Understanding. Shared resources should allow for greater impact. We plan to reestablish an Indian desk at Headquarters and to undertake research initiatives which focus on increasing business opportunities on and off the reservation. MBDA will emphasize assistance to Native Americans through the entire MBDC network, not just by Indian Business Development Centers (IBDC).

Other coordinating initiatives to support our efforts for increased competitiveness include Interagency Agreements with the United States Travel and Tourism Administration, National Telecommunications and Information Administration, International Trade Administration, Small Business Administration, Department of Labor, Department of Transportation and the Resolution Trust Corporation.

MBDA recognizes that to successfully implement meaningful programs, we must enhance research. Therefore, several studies and assessments are planned both inhouse and by research contractors. MBDA's Research Division is currently planning to assess the status of "At Risk" minority business industries, for example, Savings & Loans, Publications, and Automobile Dealers. Although MBDA is engaged in start-ups and expansions of minority businesses, we are also mindful of the need to preserve existing minority business entities.

The current MBDC Request For Application (RFA) will expire June 30, 1991. The RFA is the document governing the application process to operate the MBDC's. We will continue using the current RFA with modifications for one additional year. During the next 15 months, MBDA will be developing a new MBDC model. This model will be both market driven, as well as customer focused, to provide total quality assistance and client satisfaction. In fiscal year 1992, we seek additional funds to continue the revitalization of this unique program within the Department of Commerce.

One of the major contributions under the MBDC cooperative agreement has been the assistance provided by computerized Business Support Systems purchased to help MBDC's identify opportunities for clients. Last year the use of these systems assisted clients to obtain approximately $266 million of the total $1.64 billion in contracts and financial lending assistance provided by the MBDC network. The $266 million represents $187 million in contracts and $79 million in financings. We intend to continue these services and provide upgraded on-line access. Communications with the network is still a priority, as we continue to electronically integrate field and regional office operations.

A major advocacy initiative has been the establishment of the Minority Enterprise Development Advisory Council under the Federal Advisory Committee Act. This important group aids in advising the Secretary of Commerce on key areas impacting minority business growth and development. The Council is composed of 25 top corporate, educational, civic and former government officials. MBDA is also working actively with Joshua Smith, Chairman of the Commission on Minority Business Development, and is responsible for the capital development section as referenced in the interim report which will soon be forwarded to the President.

An outstanding example of current MBDA advocacy activity is the annual National Minority Enterprise Development (MED) Week Observance, proclaimed annually by the President and observed locally in September and nationally during the first week of October. This event highlights the achievements of outstanding minority entrepreneurs. The celebration also provides a public forum where minority business owners can expand their business.

Another new initiative within the advocacy activity will focus on promoting increased involvement of Historically Black Colleges and Universities (HBCU's), Hispanic Colleges and Universities (HCU's), and Native American and Asian schools in minority business development. MBDA has provided funding for the Federal Information Exchange (FEDIX) System that assists HBCU's and HCU's participating in a pilot program with six Federal agencies to identify federal opportunities. MBDA will market this system to encourage other agencies to participate. In February, the Agency recognized Black Entrepreneurs as role models through posters that were released nationally during Black History Month. MBDA has also funded the cities in-school program to expand minority youth development within the urban areas and will further integrate this within the BDC network.

MBDA has not held an Agency National Conference since 1988. We will conduct one in July to unveil national economic developments and new national programs that will impact the local minority business community during the coming year.

The MBDC and IBDC Program is the largest within the Agency and is funded at over 50 percent of our available resources, approximately $22 million. There are approximately 100 centers located in metropolitan areas and Indian reservations that encompass 83 percent of the minority population and over 75 percent of the minority business population in this country. This is the only nationwide program that provides direct management and technical assistance (M&TA) in obtaining contract and financing services for minority businesses. In 1990, the Agency's MBDC program assisted over 16,000 minority clients. This included approximately 10,000 minority firms with over 95,000 paid employees. The MBDC/IBDC's reported obtaining contracts and financial packages for clients valued at $1.6 billion. Also, the Centers provided 200,000 hours of billable M&TA and collected almost $2 million in fees to support the program. The return on the MBDA funding investment for direct assistance obtained for clients in fiscal year 1990 was over $65 for every dollar in MBDA outlays. The Centers assisted in creating 1,151 new business start ups. These new firms produced over 3,000 new jobs. Through increased efficiency, coupled with the redirection of our resources, we expect this reinvestment rate to be exceeded in fiscal year 1992.

Not only do the MBDC's help minority entrepreneurs to package loans, prepare business plans, and procure contracts, they serve as advocates for minority businesses in their local communities, actively leveraging market opportunities, and assisting in coordinating the utilization of locally available minority business assistance services.

When this budget request is approved, funding for the program will increase from a base of $35,730 million to $37,230 million for fiscal year 1992. Within this amount, we are requesting $822,000 for program management audits to ensure Agency integrity. An increase of $678,000 is requested to emphasize assistance to Native Americans by the entire MBDC network, not just by Indian Business Development Centers (IBDC's). The intent is to further penetrate a market driven, locally responsive, and efficiently managed business servicing unit.

The fiscal year 1992 revised MBDC program will change its performance measures from a quantitative emphasis to improved qualitative standards that highlight client satisfaction, promotion within the local community, market research and quality control. In January 1991, MBDA convened a task force of business development center operators to receive an assessment of the proposed revised program design and operations.

Guided by current Census information, regional, social, economic and cost of living indicators, and leveraged against the maximization of economic impact specific to targeted industries, MBDA will redefine a business servicing unit to meet the challenges facing minority business as we thrust into the 21st century.

Mr. Chairman, as the above indicates, the Minority Business Development Agency is cognizant of its capacity to lead and continue to anchor the Federal government's role in support of minority business.

We are confident that with the support extended by the Secretary of Commerce, Robert A. Mosbacher, and our departmental colleagues that together we can further enhance minority business enterprise. I will be pleased to respond to any questions which you or Members of the Committee may wish to ask.

SUMMARY STATEMENT

Mr. LIRA. Thank you, Mr. Chairman and members of the committee. As Director of the Minority Business Development Agency, it is my pleasure to present the fiscal year 1992 budget request. Today, I would like to submit my prepared statement for the record and summarize my remarks.

Thank you. With this, let me continue by saying our budget request for fiscal year 1992 is $43.1 million, an increase of $1.5 million over the base, which is consistent with the administration's commitment to revitalize minority business. Of this amount, $678,000 would allow us to strengthen and upgrade our business development centers and $822,000 would allow us to ensure their financial integrity by the use of compliance and financial audits.

CURRENT ACTIVITIES

I would like at this time to take a moment to focus on our current activities. I am very much aware of the concerns previously expressed by both the General Accounting Office and the Office of the Inspector General regarding needed management enhancements at our agency. To this end, I have been actively involved in, not only addressing, but also remedying these deficiencies.

To date, MBDA has implemented a staff realignment and forged new relationships with the inspector general's office. I meet with Mr. DeGeorge regularly, and have addressed and retired outstanding debt obligations and established a quality improvement council.

Currently, we are being guided by a study done by a major consulting firm to address other needed improvements and program enhancements. I am working aggressively to make MBDA a more effectively managed agency.

Programatically, last year, our nationwide business development center network assisted 16,000 clients with $1.6 billion in combined contracts and financings and assisted in developing over 1,100 startups equated to the creation of 3,000 new jobs. When you compare the Government's investment of about $23 million resulting in the generation of $1.6 billion in business transactions, this results in a rate of return of about 70 to 1 to the taxpayers of this country. This program has most assuredly contributed to this country's economic prosperity.

We are also emphasizing computer-based technological support to the BDC's. Last year, this cost-effective support contributed $266 million to the $1.6 billion in contracts and financings, this, as a result of having automated access to procurement opportunities. Notwithstanding these accomplishments, we are now redefining and enhancing our BDC Program. Though already successful, we are reassessing service delivery to maximize opportunities because we believe our assistance needs to be even more customer focused and market driven. As we enter the 21st century, we are bringing MBDA into the age of information. We are using advanced computer technology to facilitate communication and information dissemination within the agency. We plan, in the future, to expand this capacity to our funded network to assure minority entrepreneurs' timely access to opportunities and thus, help them compete more successfully.

We plan to nationally integrate BDC's through such vehicles as electronic bulletin boards and instituting a wide area network environment. Understanding the need to strengthen the BDC network's capacity to service the minority business community, we have reestablished Federal agency support on the local level through minority business opportunity committees.

We have also entered into relationships with other Federal agencies, through their offices of small and disadvantaged business utilization, as well as the Resolution Trust Corporation and the Department of Transportation as a means of providing further access to Federal procurement opportunities.

NEW INITIATIVES

Although the agency has a solid track record of providing traditional business support in the areas of business planning, loan packaging, and procurement, it is now time for us to move into more nontraditional-related segments of the economy. We are excited about introducing our new franchising, economic development, international trade, and tourism programs.

We have just initiated a major tourism study with the USTTA that has designated 14 cities in the country as having historical and/or cultural significance to minorities. Philadelphia has been identified as a premier city for minority heritage tours.

I am also personally involved in the national export initiative with the International Trade Administration to strengthen minority business entree into international trade.

In the area of advocacy, we continue to support the Minority Business Development Advisory Council. It advises the Secretary on key issues impacting minority business as well as works closely with the U.S. Commission on U.S. Minority Business Development.

Also of vital interest to us is entrepreneural development, which we support through the Cities in Schools Program, historically black colleges and universities, Hispanic, native American, and Asian colleges. We have funded the Federal information exchange in a pilot program to identify Federal research opportunities for HBCU's and Hispanic colleges and universities.

We are also reestablishing relationships with major national minority business groups.

To help us develop relevant business development programs, we will conduct research to direct us to emerging markets and lead us to answers about what we can do to preserve the gains already made. We already know that many well established minority financial institutions, auto dealers and publishers are at risk, and MBDA needs to have the ability to analyze trends and to be there to buffer the effects of economic downturns.

Finally, I would like to say that I am truly excited about having an opportunity to serve at this time since over the last 15 years I have been actively involved in support of minority business, speaking on behalf of enactment of minority business legislation and having participated in the 1981 White House Conference on Small Business. I have been an entrepreneur and I have hands-on experience in operating business development centers in the midseventies. I believe the program I have outlined truly reflects a vision and the promise of renewed commitment to minority business development and will certainly continue to contribute to America's competitiveness and economic security.

Mr. Chairman, this concludes my statement. I will be happy to respond to any questions you may have.

COST SHARING

Senator BUMPERS. Mr. Lira, first of all, your contractors charge a fee for assisting minority businesses. For example, SBDC's do not. How much do you collect in fees a year?

Mr. LIRA. Our records indicate, Mr. Chairman, that approximately $1.5 to $2 million were generated in fees last year.

Senator BUMPERS. How much?

Mr. LIRA. $1.5 to $2 million in fees were collected last year.

Senator BUMPERS. Here we are funding a program to help minority businesses with startup costs and, not startup costs but really, advice and so on, how to get going.

Fees are tough for anybody, but for minorities, they are doubly tough. Do you think it is worth it to charge those fees to those people?

Mr. LIRA. Oh, yes, sir. The fact that minority firms are repeat customers of the MBDA's and IBDC's with that we operate throughout the country is testimony to the services that we provide through this network. It also allows us to assure quality services to the marketplace. Overall, the responses that I have received from owners and operators of our network and, of course, minority entrepreneurs themselves, have been that fees really aren't an issue at this particular time; that they are satisfied with the level of fees that are charged.

Senator BUMPERS. You charge on an hourly basis; is that the way you do it?

Mr. LIRA. Yes, sir; we charge $10 or $17.50 an hour depending on the size of the firm.

Senator BUMPERS. If I were out there, I would probably go to an SBDC. They can do the same thing for me you can, and they won't charge me anything.

Mr. LIRA. Not necessarily. Now, SBDC's, by nature, are not technical assistance providers. They don't really put together the business plans or the marketing plans that drive an MBE, for instance, in the 8(a) program that the SBA sponsors or the financial portfolio that is submitted and presented before the lending community.

Senator BUMPERS. What percentage of your contractors serve minority businesses that are already in existence and those who are just trying to get started?

Mr. LIRA. I would have to get back with you on that.

[The information follows:]

ASSISTANCE TO ESTABLISHED VS. POTENTIAL BUSINESSES

For fiscal year 1990, the BDC's assisted 16,164 clients of which 9,402 (58.2 percent) were businesses and the remaining 6,762 (41.8 percent) were potential entrepreneurs.

In addition, of the firms that were assisted, 1,151 were new minority-owned businesses that became operational with BDC assistance.

Senator BUMPERS. You do both, don't you?

Mr. LIRA. Yes, sir.

Senator BUMPERS. Can you give me that? I don't know whether you said this in your statement or not, but I believe—just a minute. Let me find it.

You note in your statement that, quote, "Black firms employ approximately 225,000 employees and are principally located in inner cities in America."

Senator Hollings and I represent rural States but with significant black populations, especially concentrated in, for example, in the Delta area of my State, which is very poor. What is the split? What is your split in the use of your funds between rural and urban?

Mr. LIRA. On the first part, we seek to maximize the full application of financial and human resources available in the marketplace. At the present time, we are concentrated in the inner cities of America, since that is where the greatest concentration of minority businesses are located.

Our network of business development centers are structured so that approximately 75 percent of the minority firms operating in this country can be reached either directly or indirectly as a direct result of our presence.

Senator BUMPERS. I think there is some concern on this subcommittee, also, about the fact that you hire outside contractors, frequently Big 8 accounting firms, to run these centers.

Why couldn't the MBDA provide priority to hiring local MBDC contractors?

Mr. LIRA. Well, for the most part, Mr. Chairman, we do.

Senator BUMPERS. Do you?

Mr. LIRA. Yes, sir; I believe that, of all the operators that we have working with us, one is a Big 8 accounting firm. I believe they operate only 7 to 10 of those centers.

Senator BUMPERS. How many centers do you have?

Mr. LIRA. Approximately 103, combined.

Senator BUMPERS. You are saying the Big 8 is only operating how many of them?

Mr. LIRA. A Big 8 firm is only operating, I believe, 8 percent of our portfolio of 100 plus centers.

Senator BUMPERS. You had a failing last year, Laventhal & Horwath.

Mr. LIRA. Yes, sir, Laventhal & Horwath closed in Kansas City, Detroit, and Charlotte. We are, I believe, back in operation with independent operators.

Senator BUMPERS. How do they fail? How do you fail in this business? We say they failed.

Mr. LIRA. In that particular instance, the operator filed for bankruptcy, and what they were doing for us represented a nominal sector of their business operation.

Senator BUMPERS. That was just one of several parts of their business, I take it.

Mr. LIRA. Yes, sir.

Senator BUMPERS. So when they went under, this one closed.

Mr. LIRA. Yes.

Senator BUMPERS. How much did you lose out of it, anything?

Mr. LIRA. I don't believe we lost anything. We were able to close expeditiously.

Senator BUMPERS. I have one final question, and that is I want you to tell me as precisely as you can what do you do that the SBDC's don't do?

Mr. LIRA. We service predominantly the minority business community.

Senator BUMPERS. I am not talking about who you serve; I am talking about the service you render.

Mr. LIRA. We are technical assistance providers. We provide management and technical assistance on a one-to-one basis with a minority business person.

Senator BUMPERS. They do the same thing, and of course, they have some minority business, too. They help minority businesses, also.

Mr. LIRA. Yes, sir, but we are also technical assistance providers in the sense that we develop financial applications. We are responsible for developing the cash flow requirements or the pro formas that have to be developed, complete assistance, and completing the business plan for the particular candidate and also accompanying the client to the lending institution for financing considerations, as well as procurements.

We have access to construction specifications and other engineering assistance that we provide to minority firms in the contracting area. So we are highly specialized in the field of technical assistance on behalf of minority business.

Senator BUMPERS. Do you know whether the administration is going to propose any authorization for this agency this year? It has never been authorized.

Mr. LIRA. I have just been appointed as Director of this agency, and at the present time, there has been nothing but support expressed by the Secretary's office, and the Secretary personally, for our mission and the support of minority business.

Senator BUMPERS. How long have you been here in this job?

Mr. LIRA. I was appointed a couple of weeks ago.

Senator BUMPERS. What were you doing before that?

Mr. LIRA. I was the Acting Director prior to that.

Senator BUMPERS. For how long?

Mr. LIRA. About 3½ months.

Senator BUMPERS. What were you doing before that?

Mr. LIRA. I was the Deputy Director since May 1990.

Senator BUMPERS. Who did you succeed in this job?

Mr. LIRA. A gentleman by the name of Mr. Kenneth Bolton.

Senator BUMPERS. How long was he there?

Mr. LIRA. About 1½ years or so, I believe.

Senator BUMPERS. We haven't had very much continuity in this agency, have we, as far as directors are concerned? It is musical chairs. We just keep turning this over. I always am very suspicious of programs like that, but my big concern here is the possibility that we are duplicating; we have got two agencies here trying to help small businesses start up, technical assistance. You are talking about technical assistance. That is precisely what SBDC's are designed to do, is provide technical assistance, and they do all of those things. They design budgets for people who are trying to apply for loans, to get a small business started, to keep it going; maybe refinancing loans, and at one time, I think it was President Reagan who wanted to combine this with SBA, and I must say, with the utmost respect, I am not sure that is not a good idea.

I just can't figure it out. Everything you said you do SBDC's do, too. I don't care whether you combine SBDC's with this or this with SBDC's, but it seems to me we have got a lot of duplication going on.

ADDITIONAL COMMITTEE QUESTIONS

We may or may not have a couple of questions for you, Mr. Lira. I appreciate very much you coming over here and being with us this morning.

Mr. LIRA. Thank you very much, Mr. Chairman. I appreciate that.

[The following questions were not asked at the hearing, but were submitted to the Agency for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

LOCAL VERSUS OUTSIDE CONTRACTORS

Director Lira, one criticism we have heard of MBDA is that you primarily hire outside contractors—frequently big eight accounting firms—to run your Minority Business Development Centers.

Question. Why couldn't MBDA provide priority to hiring local MBDC contractors?

Answer. The MBDC program is operated through competitive cooperative financial awards. Moreover, it is not restricted to any group or type of organization. However, one evaluation criterion in the application guidelines does require a demonstrated knowledge of the geographic area to be served in terms of the needs of potential client businesses, and past and ongoing relationships with local public and private entities that can possibly enhance the program, i.e., local experience.

Question. What modifications would this require? Can it be done simply through an internal policy change?

Answer. Most of the firms which are competitively selected for our MBDC network are local firms. Only eight out of the 103 MBDC/AIP firms are operated by a big eight accounting firm.

Question. How has MBDA handled the failure of the MBDC's that were run by the firm Laventhol and Horwath?

Answer. Laventhol and Horwath (L&H) were operating three of our centers which were closed in December 1990 when L&H failed. All three of those centers were reopened as of April 3, 1991. We accelerated our award process to minimize the down time. In one city, we made a provisional temporary two month award thus experiencing only a six week shut down.

In Kansas City, Missouri we went into a joint effort with the city and utilized the L&H staff. This arrangement will provide ongoing assistance to the minority community until the new contractor is in place.

RURAL VS. URBAN

Director Lira, your statement notes that "black firms employ approximately 225,000 employees and are principally located within inner cities in America."

Both Hollings and I represent a state that have significant rural minority populations.

Question. Could you explain what MBDA is doing to assist rural minorities with starting or expanding businesses?

Answer. In order to maximize the utilization of MBDA's funding, we have so far directed our efforts in the urban areas servicing the largest population concentration. We are currently in the process of negotiating interagency agreements regarding a pilot program consisting of satellite offices servicing rural minority Americans. These offices will be managed by our existing MBDC's.

Question. What is the split in your 1990 and 1991 program funds between urban and rural areas?

Answer. Presently, all funds are allocated to urban areas which have the largest concentration of minority businesses and formulation.

SET ASIDES VERSUS BUSINESS START-UPS

Question. Our review of MBDC's indicates that they often spend a lot of effort trying to help clients obtain minority set aside "8(a)" contracts. If the firm they counsel ends up getting a set aside contract—that is claimed as a success and included in MBDA's statistics.

Would you concur with this assessment? How much of the MBDC and headquarter's efforts are oriented to helping minority firms win Federal procurement and construction contracts?

Answer. The assistance provided by the centers to 8(a) firms in fiscal year 1989 was minimal, representing only 3 percent of total clients served.

Under Executive Order 12432, MBDA is charged with supporting the efforts of all minority business enterprises, those that are eight (8)(a) certified enterprises as well as non eight (8)(a) certified in assisting them to secure Federal procurement and construction contracts. MBDA Headquarters works directly with the Federal Offices of Small and Disadvantaged Business Utilization, covering the full range of Federal procurement opportunities. Our Business Support Systems provides the MBDC's with on-line data on Federal procurement opportunities.

MBDA REGIONAL STAFF VERSUS PROGRAM FUNDS

Question. What do your MBDA regional staff do besides monitor the funding and activities of the Minority Business Development Centers in their regions?

Answer. The project management functions include the following activities: competitive solicitation; competitive panelling; award action packaging; desk-assessment and on-site monitoring. In addition, the MBDA's programs and sponsored efforts include, coordinating regional programs and opportunities relating to advocacy, workshops, and marketing Federal opportunities for minority businesses located in the region.

How much of MBDA's budget is allocated to regional staff?

Answer. A total of $4.6 million or approximately 30 percent of the budget is allocated for the Regional offices.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

MINORITY BUSINESS DEVELOPMENT CENTERS

This subcommittee funds Small Business Development Centers, University Centers through EDA, and Minority Small Business Development Centers.

Question. What is the relationship among these centers?

Answer. The primary relationships would be found amongst the operators of the MBDC's and SBDC's and in their involvement in the business resources of the public and private sectors that are used in furtherance of their respective program objectives. Because the client base can be different as follows:

- —MBDC's, operated by private consulting organizations and state and local government entities, are designed primarily to serve minority businesses by providing ongoing management and technical assistance. They are also responsible for coordinating all applicable resources within their service area on behalf of minority business enterprises.
- —SBDC's are operated by state governments, state chartered development credit or finance corporations, and public or private institutions of higher learning to service small businesses in need of management and technical assistance.

Question. Does MBDA attempt to work with the SBA and EDA to develop joint business development strategies, or do we have three agencies pursuing independent but similar goals?

Answer. Yes, we do work together and we are developing strategies, for instance: MBDA and SBA are working toward several joint initiatives including franchising, international trade and capital access in general. We are currently working with EDA on a regional basis in areas of common concern.

STAFFING VS. PROGRAMS

MBDA has a relatively high staffing to program ratio; you have 216 positions with approximately $25 million in grants. By comparison, EDA has almost 9 times the grant budget, at $218 million, with 365 positions.

Question. Why is the staffing level of MBDA so high compared to that of an agency like EDA?

Answer. The Economic Development Administration (EDA) grants are designed primarily to alleviate conditions of substantial and persistent unemployment and under-employment in economically distressed areas and regions of the Nation. EDA does not necessarily perform detailed program monitoring and assessment of their cooperative agreements/grants. EDA primarily performs a processing function.

We have a network of 103 Minority Business Development Centers located throughout the Nation. These Centers provide minority entrepreneurs with management and technical assistance services to start, expand or manage a business. MBDA personnel monitor these recipients on a quarterly basis to insure compliance with established policies and procedures and to assist them in accomplishing their established goals.

In addition, MBDA is developing high business growth opportunities and resources. We are developing National Programs to access financial capital and surety bonding for minority contractors, improving international trade opportunities, developing a franchise strategy, strengthening Federal procurement opportunities for minority business, and strengthening Native American business programs.

The staffing level of MBDA may appear to be high compared to that of an agency like EDA, but work assignments, monitoring requirements, and providing a range of business development and technical assistance services requires a larger and more diverse level of staffing.

SUBCOMMITTEE RECESS

Senator BUMPERS. With that, this will conclude our hearing. Our next meeting after the recess will be on April 9 at 10 a.m. We will review the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology. Thank you again.

Mr. LIRA. Thank you.

[Whereupon, at 11:46 a.m., Tuesday, March 19, the subcommittee was recessed, to reconvene at 10 a.m., Tuesday, April 9.]

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS FOR FISCAL YEAR 1992

TUESDAY, APRIL 9, 1991

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:10 a.m., in room S–146, the Capitol, Hon. Ernest F. Hollings (chairman) presiding.

Present: Senators Hollings, Rudman, and Hatfield.

DEPARTMENT OF COMMERCE

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

STATEMENT OF DR. JOHN A. KNAUSS, UNDER SECRETARY FOR OCEANS AND ATMOSPHERE

ACCOMPANIED BY:

MARK BROWN, DIRECTOR, OFFICE OF BUDGET, DEPARTMENT OF COMMERCE
SYLVIA EARLE, CHIEF SCIENTIST
JOY WILSON, ASSISTANT SECRETARY
GRAY CASTLE, DEPUTY UNDER SECRETARY
RODNEY WEIHER, COMPTROLLER

BUDGET REQUEST

Senator HOLLINGS. Good morning. Today, the subcommittee will hear from two of our most popular agencies, the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology. We will hear first from Dr. John Knauss, the Under Secretary of Commerce for Oceans and Atmosphere.

For fiscal year 1992, the administration has requested appropriations of $1.5 billion, an increase of $143.8 million over the current fiscal year.

However, those statistics do not tell the full story, because there are a lot of puts and takes within those numbers and a lot of must-pay increases that take away room from other meritorious programs, for example, an increase of $146 million or 70 percent over this year is requested to maintain weather satellite procurement and operations. Unfortunately, CBO baselines and budget summit spending caps do not take into account the fact that satellites are not purchased on a level funding basis and requirements vary widely from year to year.

Those statistics also do not make it clear that $174 million in various NOAA programs have been proposed for termination. The budget includes several new initiatives, such as modernizing the National Marine Fisheries Service's computers and initiating procurement of new Weather Service technologies.

PREPARED STATEMENT

Dr. Knauss, we appreciate your appearance this morning, and your associates. We would be delighted to have your statement accepted in the record in its entirety, and you can deliver it as such or highlight it as you wish.

[The statement follows:]

STATEMENT OF JOHN A. KNAUSS

Mr. Chairman and members of the Committee, I am pleased to appear before you today in support of the fiscal year 1992 budget request for the National Oceanic and Atmospheric Administration (NOAA). I have with me Rodney Weiher, our Comptroller, and my Senior Management. NOAA is requesting total budget authority of $1,611,991,000 which includes $35,389,000 proposed for transfer from the Aviation Weather Trust Fund.

This budget proposal continues our efforts to reflect a rational approach to funding important national programs and meeting critical national goals. The budget attempts to balance the two goals of maintaining NOAA's position as an important science agency and addressing the serious budget problems that this government continues to face. Bearing these goals in mind, the budget requests increases for three of our on-going high-priority initiatives: that is, modernization of the National Weather Service; Climate and Global Change; and the Coastal Ocean Science program. In addition, this year, we are proposing three additional initiatives. The first is a NOAA-wide initiative to enhance our ability to manage environmental data. Second is a seafood safety program administered jointly by NOAA and the Food and Drug Administration. The third is the President's multi-agency Coastal America initiative.

In addition, the 1992 budget reflects my ongoing commitment to address those NOAA programs that both the President and Congress support. Funds are included for the National Sea Grant College Program and Coastal Zone Management. We are similarly committed to addressing the critical needs of our Fisheries programs. I would like to turn now to the highlights of our 1992 budget request.

Let me start with the President's climate and global change research program.

NOAA's request for our participation in the U.S. Global Change Research Program (USGCRP) is $78 million, an increase of $30.8 million over current funding levels. Our 1992 proposal will allow us to continue our contributions to the three major streams of activity in the USGCRP: documentation of earth system change; focused studies on controlling processes; and integrated conceptual and predictive models. As you know, this is a well-coordinated inter-agency program of which NOAA is a key partner. NOAA's program addresses both near- and long-term goals. In the near-term, NOAA is working to provide reliable predictions of global climate change and the associated regional implications on timescales ranging from seasons to a century or more. In the long-term, NOAA's objective is to establish a new national information service that uses reliable assessments and quantitative predictions of changing global climate. Like the National program to which it contributes, our fiscal year 1992 budget focuses on high-priority multi-disciplinary investigations that respond to some of the most critical near-term information needs, that is, determining whether and to what extent the global climate system will change and how human activities influence these changes. The Climate and Global Change Program enables NOAA to bring its unique talents and special capabilities to bear on some of the most critical scientific uncertainties identified by the Scientific and Impacts Working Groups of the Intergovernmental Panel for Climate Change. Reliable predictions of climate change are a difficult intellectual challenge. Reliable prediction of climate change resulting from either natural or anthropogenic factors are of extraordinary economic importance.

Another high-priority request in 1992 is $5.6 million for NOAA's Earth System Data and Information Management Program. The request includes a proposed 1991 permanent reprogramming of $7 million, which will allow us to begin this critical effort this year. With that reprogramming, our 1992 program will be $12.6 million.

NOAA is responsible for managing the most comprehensive, long term, and up-to-date environmental assemblage of information on the status of the Earth that exists today. Unfortunately, much of this data is at serious risk due to deteriorating storage media. In addition, accessibility to these data is, in many cases, limited. All of this is happening at a time when both the quantity of environmental data and the demands for rapid and easy access to high quality environmental data are growing rapidly.

NOAA has developed a data management initiative designed to address two critical objectives: to rescue NOAA's environmental data currently at risk; and to make NOAA's data and information more accessible. To achieve these objectives, we will begin immediately to prevent irretrievable data loss. We intend to migrate data tapes to new media and to migrate paper records to digital format. The proposed increase addresses the objective of information accessibility as well. Currently, less than half of the data is readily accessible. Our goal is to have at least 90 percent of NOAA's environmental data and information accessible to users within five years. We have already begun to build and maintain an automated NOAA Earth System Data Directory which describes both available data and the means of access. I am deeply committed to this program; we cannot afford to wait.

Another highlight of our budget request is the continuation of the National Weather Service modernization. Consistent with our 1991 request, our 1992 request contains sufficient funds to maintain existing operations at all weather offices. The budget requests $55.6 million over current funding levels for the systems necessary to implement the modernization. I wish to emphasize that having started down the road of acquiring the new equipment it is important that we maintain our schedule in order to have all the pieces in place in the most timely and economic manner.

Our goal is to capitalize on the new technologies to improve greatly our warning and predictive capabilities, thereby improving our ability to inform the public and improve the public's ability to respond.

The 1992 budget requests a $3.8 million increase for Next Generation Weather Radar (NEXRAD) The increase will allow us to continue full-scale production, construct facilities, and maintain logistics support. Second, the budget requests a $1.4 million increase for the Automated Surface Observing Systems program (ASOS) to continue the full-scale production contract, to fund operations and to maintain installed units, and to train operators. Third, the budget requests a $34.5 million increase for the Advanced Weather Interactive Processing System (AWIPS)/NOAAPORT for the development phase of this system and to provide for initial remapping of GOES data. Finally, the budget requests $15.9 million to acquire a Class VII super computer at the National Meteorological Center.

Our request also contains an increase of $1.8 million for the Modernization and Associated Restructuring Demonstration and Implementation (MARDI) This increase is necessary for preparation of the MARD demonstration in 1993.

Our 1992 budget provides a $7 million enhancement of another high-priority NOAA program—the Coastal Ocean Science Program. Three years ago, NOAA initiated development of this program to focus agency-wide capabilities on efforts to improve our understanding of the natural and human-caused factors that impact the quality of America's coastal and estuarine environments, and to improve dissemination of that knowledge to environmental decision-makers. Through emphasis on top-level NOAA management guidance and participation from all NOAA line offices, we have developed a Coastal Ocean Science Program that is both flexible in dealing with the ever-changing problems of the coastal ocean, and that establishes a long-term commitment to the coordination of resources.

In 1992, the Coastal Ocean Science Program will build upon current efforts in five critical areas to improve our understanding and predictive capabilities in the coastal ocean: Nutrient Over-Enrichment; Estuarine Habitats; Coastal Fisheries Ecosystems; Toxic Chemical Contamination; and Physical Impacts. These efforts will rely upon both internal and external peer review to ensure that the Program makes the most effective use of resources to address high-priority needs. In addition, NOAA will continue to make a strong effort to seek the advice and recommendations of a large group of coastal managers, resource caretakers, government regulators, and field scientists to find the gaps in environmental information and identify ways to ensure decision-makers at all levels have access to the valuable information provided by the Coastal Ocean Science Program.

NOAA's 1992 budget includes $8 million to implement a seafood safety program in cooperation with the Food and Drug Administration (whose budget includes a request of $15 million). NOAA and FDA will work with the Congress to implement an effective seafood safety program responsive to the National Academy of Science's reports on seafood safety, which will provide assurance to the United States consumer that seafood, particularly shellfish, in the marketplace is safe and wholesome. We are requesting $6.5 million in appropriated funds directed at public health concerns. An additional $1.5 million in support for the initiative will be derived from industry assessments.

The final highlight of our budget request is a new initiative in coastal resource protection. NOAA's 1992 budget includes $5 million to fund our participation in a $23 million multi-agency Presidential initiative known as Coastal America. The Coastal America initiative is an important and innovative approach to solving the environmental problems that threaten the Nation's coastal resources. Along with the Department of the Interior, the Army Corps of Engineers, and EPA, NOAA will work to protect, maintain, and restore coastal living resources. This program offers significant opportunities for interagency cooperation and will focus on the management actions needed to address three major problems that threaten our important coastal resources: habitat alteration and loss, in particular, loss of wetlands; nonpoint source pollution; and contaminated sediments. I am delighted to be a part of this new program.

This budget also provides funding of $141 million associated with the annual cost of procuring spacecraft, launches, and associated ground systems for the polar and geostationary orbiting satellites. The request includes $17.2 million to fund full-year operations costs for LANDSAT 4 and 5.

NOAA will continue its work in natural resource damage assessment with special emphasis on assessment and restoration of damages associated with the Exxon Valdez oilspill. The 1992 request includes an increase of $2.5 million to continue work on the impacts of this spill on the natural resources of Prince William Sound.

Finally, I would like to note briefly certain other key aspects of NOAA's 1992 budget proposal.

NOAA will improve its stewardship of living marine resources. The 1992 request includes $8.1 million to improve and expand scientific advice for, and management of, our Nation's fisheries. This request is essential to the recovery of fisheries off our East Coast and to preserve the great fisheries off Alaska. The 1992 request also includes $2.5 million to obtain minimum population estimates for marine mammals and endangered species.

We propose to continue to address NOAA's critical infrastructure problems through a variety of means. We will initiate a NOAA-wide environmental compliance program, add new facilities in Boulder, Colorado and Asheville, North Carolina, and continue critical fleet maintenance.

Thank you Mr. Chairman. This budget request, my second as Administrator of NOAA, allows us to carry out our critical program goals and take important new steps forward. I remain excited and enthusiastic about NOAA, its programs, and its people, and I believe the Administration's endorsement of NOAA is reflected in the budget proposal presented today. I look forward to working with you throughout this process and would be happy to address any questions that you or other members of the Committee might have on our budget request.

INTRODUCTION OF ASSOCIATES

Dr. KNAUSS. Thank you, Mr. Chairman. I, indeed, would like to have the statement in the record, and I will just summarize what I have to say.

I have at the table with me on the left, Rodney Weiher, our Comptroller; Gray Castle, the Deputy Under Secretary; Joy Wilson, the Assistant Secretary; Sylvia Earle, our Chief Scientist; and Mark Brown, from the Budget Office of the Department of Commerce.

SUMMARY STATEMENT

Mr. Chairman, this budget proposal continues our effort to reflect a rational approach to funding important national programs and meeting critical national goals.

It attempts to balance the two goals of maintaining NOAA's position as an important science and service agency, and as you noted, in addressing the serious budget problems that this Government continues to face. I believe the administration's endorsement of NOAA's program and its people is reflected. This budget proposal I am presenting to you today is meritorious of those concerns.

As you noted, NOAA is requesting budget authority of $1.612 billion, which includes a proposal to transfer $35 million from the aviation weather trust fund. It is a 9.5-percent increase over the budget we are operating under this year. The budget requests increases for three of our ongoing, high-priority initiatives: modernization of the National Weather Service; the climate and global change and the Coastal Ocean Science Program.

In addition, this year we are proposing three additional initiatives. First is a NOAA-wide initiative to enhance our ability to manage environmental data; second, a seafood safety program administered jointly by NOAA and the FDA; and third, the President's multiagency coastal America initiative.

In addition, it reflects my ongoing commitment to several programs that Congress has long supported, including the National Sea Grant Program and coastal zone management, albeit there is not as much in this budget as Congress has provided in the recent past for those two programs.

As to our ongoing initiatives, let me first note the President's Climate and Global Change Research Program. Our 1992 proposal of $78 million is an increase of $38 million and will allow us to continue our key contributions. I want to emphasize the word "key", to the U.S. program in several ways: Documenting the Earth system's change; studying the impact of anthropogenic changes to global change processes; and developing integrated predictive models.

This program enhances our ability to reliably predict climate change resulting from natural or anthropogenic factors, and it is of extraordinary economic importance. The implications of global change are in the trillions of dollars, so our predictions must be accurate.

Another high-priority request is NOAA's Earth System Data and Information Management Program. NOAA is responsible for managing the most comprehensive, long-term and up-to-date environmental assemblage of information on the status of the Earth that exists today. Data and data management has long been neglected in NOAA. It is a very high priority of mine and has been since I have arrived.

We have an emergency program underway at NOAA to save old data before it disappears as magnetic tapes wear out, and it is the primary reason for the reprogramming request we now have before the Congress of some $7 million in this budget year.

Our goal is to make easily available some 90 percent of all of our data within 5 years, and also prepare for the future.

What was a data stream a few years ago is now a strong river. It is about to be a raging torrent. We have to be prepared for this, and I am deeply committed to trying to resolve our data management issues.

Weather Service modernization. We must try to maintain our schedule in order to have all the pieces in place in the most timely and economic manner. New technologies will greatly improve our warning and predictive capabilities and will improve our ability to inform the public and improve the public's ability to respond.

We have had some problems, some slippages in our schedule, but these problems are manageable. We know enough about this radar, particularly Nexrad radar, through the tests to know that we have a magnificent piece of equipment.

Fourth, let me mention the Coastal Ocean Science Program, another high-priority program for NOAA, an increase of $7 million in fiscal year 1992 to $17 million. In the 3 years since NOAA initiated this program, we have made real headway in understanding the natural and human-caused factors that impact the quality of America's coastal and estaurine environments and to improve the information needed by environmental decisionmakers at the Federal and local levels.

The Coastal Ocean Science Program is one of the best examples I can think of of a successful agencywide cooperative effort that demonstrates both flexibility and long-term commitment to the coordination of resources.

NOAA's 1992 budget includes $8 million to implement a seafood safety program in cooperation with the Food and Drug Administration that will provide assurance to the U.S. consumer that seafood, particularly shellfish, available on the marketplace is safe and wholesome.

The final point of our budget request which I would like to highlight is a new initiative in coastal resource protection and management. We are participating in the President's coastal America initiative, along with the Department of the Interior, the Army Corps of Engineers, and EPA. In total, that is a $23 million program; NOAA's share of this is $5 million.

This program focuses on the management actions needed to address major programs that threaten our important coastal resources, habitat alterations, nonpoint source pollution, and contaminated sediment.

I recognize that this program appears to have caused some confusion as to what its goals are. Let me point out that it is not a research program; it is primarily a demonstration project, as well as a management initiative. It is an interagency program. It is, if you will, a fairly large carrot that is being placed in front of the various agencies to help them work together. The initiative is to develop ongoing programs, such as in NOAA's case, its Coastal Management Program or its Habitat Protection Program.

Mr. Chairman, I am looking forward to answering your specific questions and those of other members of the committee about the NOAA proposals in the budget. But before I do I would like to mention another topic of interest to you and the committee members, and that is NOAA's role in the Persian Gulf and their involvement with oilspills and wildlife. Our hazardous materials response team, Hazmat, has been called on to offer its expertise and advice in protecting the path of oilspills and advising on what might be done as well as providing other technical assistance. We are also involved in monitoring the environmental effects of the oil fires in Kuwait and are developing a plan to respond to what some have called the greatest manmade environmental disaster in recorded history.

We are doing this in cooperation with a number of Federal agencies; the nations of the Persian Gulf, and the world's meterological agencies. Thank you, Mr. Chairman. I am prepared to answer your questions.

PERSIAN GULF ENVIRONMENTAL DAMAGE

Senator HOLLINGS. What did you find through your work in the Persian Gulf? You have made the conclusion, and I think it is perhaps correct, that it is the greatest manmade disaster. What happens next?

Dr. KNAUSS. There are two points: One is that part of that monitoring is to provide the assistance and help we can to the Public Health Service who has the responsibility to deal with populations in that area. We can, by monitoring what actually is in the atmosphere and providing them with the information, provide advice to the Public Health Service. That is No. 1.

The second is that although we didn't design the experiment, the problem of how to deal with problems of this nature allows us to learn more about issues such as what people refer to as nuclear winter. This is not a nuclear winter-type of experiment, but it is an extraordinary experiment to learn more about how these kinds of systems work with respect to when you get to large inputs of fire and smoke. In fact, we have seen in that area embryonic firestorms, where essentially, the fires are coming up and you actually find the influx of air into the system, and the last time that people had a chance to look at such firestorms was during World War II in Tokyo.

COASTAL MANAGEMENT PROGRAMS

Senator HOLLINGS. You say that the administration supports all the programs, yet you cut coastal zone management. We said the entire budget is $175 million; 25 percent of the coastal zone management budget is cut and then you say, "Oh, by the way, let's start a program called coastal America."

Where are you headed there?

Dr. KNAUSS. In the first place, Mr. Chairman, we did not really cut coastal zone by 25 percent, because another $5 million was put in similar programs. CZM has really gone from $35 million to $30 million, which is one-seventh. But it is, I realize, a cut.

The second point is that the coastal America initiative is what I tried to explain earlier: An attempt by the administration to encourage interagency cooperation. There are a number of agencies involved in trying to manage our coastal zone. There are agencies within the Department of the Interior, primarily the Fish and Wildlife Service; there is EPA; there is the Corps of Army Engineers; and there is NOAA, through our Coastal Zone Management Program.

The thought is, that by working together we can probably do a better job. This program is an attempt to try to get interagencies to work together. Let me give you an example of one.

Senator HOLLINGS. Why isn't coastal zone management? That is the title; that is the role; that is the assignment. Why aren't they doing it to get that coordination?

Dr. KNAUSS. On the other hand, EPA has a responsibility for the Clean Water Act.

Senator HOLLINGS. I know that.

Dr. KNAUSS. And the Army engineers has the responsibility for dredge spoil.

Senator HOLLINGS. And they will have that responsibility under coastal America. We know that. Coastal zone management is supposed to manage and try to get all agencies and levels of government working together under their particular responsibilities.

Dr. KNAUSS. Well, we can look upon coastal America, then, as an expansion of the Coastal Zone Management Program.

STATUS OF THE NOAA FLEET

Senator HOLLINGS. As you propose to cut funding for coastal zone management to do the job. That is, typical. You didn't fund the new coastal zone management authorization, but let's move on. For example, magnetic tapes are wearing out. How about the ships—NOAA's fleet? We won't have any NOAA ships that are seaworthy by the end of this decade.

Dr. KNAUSS. You are absolutely right. We have completed a study of the NOAA ships. Volume III of this three-part study was completed just last week. I am planning to brief the Secretary's office and OMB on this within the next couple of weeks, and we will have this study up to Congress very shortly. It is, I think, an in-depth study of the nature of our present fleet and what the problems are. You are absolutely correct; if we do nothing, we will not have a fleet by the end of the century. That is, if you make the assumption that ships without major efforts at mid-life overhaul and so forth, have a life expectancy of 30 years. We will not have any ships less than 30 years old that have not been reworked by the end of the century.

GOES SATELLITES

Senator HOLLINGS. Let's jump on to the geostationary or GOES Weather Satellite Program. We raised the question with Secretary Mosbacher. GOES is over budget; it is behind schedule and not meeting the design specifications. And we are very, very concerned that we are going to have a satellite coverage gap with respect to tracking hurricanes, like Hugo. Hugo I automatically say now since we have experienced it, but all of us are vitally interested in that, and there is some question about your contractor. Dr. Knauss, what are we going to do about the GOES program?

Dr. KNAUSS. You are absolutely right, Senator. Depending upon how one uses the numbers, the GOES satellite is now at about twice the cost that we originally anticipated, from $500 million to $1 billion in terms of 5 year satellites. It is several years behind schedule.

Furthermore, at least one of the key instruments on it doesn't work. So we have a new problem to face.

Let me tell you what does work on it. There are two major instruments on the GOES satellite. There is the imager, which produces the pictures of clouds that you see on your television at night.

There is also a sounder which provides information on the water content of the atmosphere and other kinds of information. The imager, as of the moment, works; it is not perfect, but it works better than the one we have on our present GOES satellite. There is more testing to be done on it, but we are quite confident at this point that it will meet all of our specifications.

The sounder is not working at this time. In order to get the GOES satellite to be launched in October 1992 or, at the latest, maybe December 1992, we have to make a decision sometime in the middle of June as to whether we are going to go with the satellite with what we have got; namely, an adequate imager and probably a very inadequate sounder. That is a decision we will make.

If we do, we will have a satellite that is less than satisfactory to us. It will provide the kinds of information that we need to keep track of hurricanes. It will not provide the kinds of information that we would like to have that gives us more detailed information about the nature of the atmosphere.

Senator RUDMAN. Whose responsibility was it to develop the sounder?

Dr. KNAUSS. Gray, can you give the history? Because the companies have changed names several times.

Mr. CASTLE. Well, the prime contractor working for NASA was Ford Aerospace. That was about 9 months ago by Loral. The instrument subcontractor from the outside has been ITT Fort Wayne, and to the extent that there have been failures, it has been at Fort Wayne.

Senator RUDMAN. How long has this research project been going on?

Mr. CASTLE. Five or six years.

Senator RUDMAN. How much money has the U.S. Government spent on this project so far?

Mr. CASTLE. I don't know. Mr. Weiher, what is the total to date on this?

Mr. WEIHER. I think about $760 million.

Senator RUDMAN. It is getting close to three-quarters of $1 billion, isn't it?

Dr. KNAUSS. Before we are through, it will be $1 billion.

Senator RUDMAN. You are saying that that $1 billion may, in fact, produce nothing that is workable?

Dr. KNAUSS. No, no; we will have a satellite that will provide the imagery.

Senator RUDMAN. No; I am talking about the sounder part of it.

Dr. KNAUSS. In order to have a satellite up there before the present satellite runs out of power, we may have to send a satellite up that will not have an adequate sounder, that is right.

Senator RUDMAN. Is that because we are pushing the state of the art?

Mr. CASTLE. Yes; that is correct.

Senator RUDMAN. Is that the reason?

Mr. CASTLE. That is correct. It is a state-of-the-art advance, a dramatic state-of-the-art advance, and the sounder we have now is much less or has much fewer capabilities than the satellite.

Senator RUDMAN. Excuse me, Mr. Chairman.

NEXRAD

Senator **HOLLINGS**. That is good. I appreciate it.

Senator Hatfield, you interrupt as you will.

That is what we want to do, is get the information on GOES, and, of course, Nexrad is the other one. You say it is a fine piece of equipment, and we've heard reports that it is flawed. The press reports that Unisys is claiming you owe them an additional $250 million. Or something else like that or they are trying to get out of the fixed price contract they signed. What is the situation with Nexrad?

Mr. **CASTLE**. As Dr. Knauss indicated, the Nexrad technology is excellent. We had a 10-day test of the first operational unit in Oklahoma City, and, according to our meteorologists and, I think, the FAA's and the Air Force's, it performed extremely well.

The problem is that Unisys apparently underbid the contract and is now not willing to provide the units that they are contractually required to provide for the contract price, and we expect to have, by the middle of May, definitive negotiations with them either to arrive at a resolution which will involve their continuing or a decision to do something other than go with Unisys.

We would like to go with Unisys, because this is good equipment, but there is a point beyond which you say, "Well, wait a minute."

Senator **HOLLINGS**. When will that decision be made? This has been before the subcommittee now for several years. The GOES satellite and Nexrad keep going ahead.

Senator **RUDMAN**. Several years? I think it is a lifetime.

Senator **HOLLINGS**. Yes; but the report and the testimony is that everything is up to date in Kansas City, and then you look around, and you hate to open up the morning newspaper. GOES is gone; Nexrad is flawed; everybody is suing everybody; the ships are rotting; coastal zone management is cut. The whole thing is falling down around us, but everybody is happy. [Laughter.]

Dr. **KNAUSS**. We have had problems with GOES from the beginning, and I think we have kept the subcommittee informed that it has been a problem since the beginning.

Nexrad has slipped a year from the time of the program's inception. Building these new pieces of equipment takes a long time.

Our problem is not really equipment; our problem is with the Nexrad contractor, and we are going to resolve that contractual problem very quickly, one way or another. The problem is not with the Nexrad equipment.

Senator **HOLLINGS**. The problem is not within NOAA itself and the management of that contract?

Dr. **KNAUSS**. We can't, we have no——

Senator **HOLLINGS**. What is the answer? I didn't hear that.

Dr. **KNAUSS**. I haven't given you an answer. I have little control over a large, defense-oriented company that goes broke for a lot of different reasons, of which the Nexrad contract is only a very small part.

As far as the GOES satellite contract is concerned, it is managed by NASA. We do not manage the GOES contract. We pay the money; we pay the bills, but that is managed by NASA, not NOAA.

SEAFOOD INSPECTION

Senator HOLLINGS. Not NOAA. I am going to yield, but on the seafood inspection, what is the position of NOAA and the administration now with respect to seafood inspection?

Dr. KNAUSS. The administration does believe that a mandatory seafood inspection program would be desirable. It is my understanding that we will provide technical assistance to you and your staff with respect to a bill that you are in the process of reintroducing this year.

Senator HOLLINGS. And you support the idea of NOAA working with the Food and Drug Administration?

Dr. KNAUSS. Yes, sir; that is the administration position.

Senator HOLLINGS. That is the administration position. Let me yield. Excuse me, Warren. You go ahead.

MAJOR SYSTEMS PROCUREMENTS

Senator RUDMAN. Thank you, Mr. Chairman. Dr. Knauss, I am just sitting here this morning wondering if there are beautiful days like this that you don't long for your laboratory in Rhode Island. [Laughter.]

Dr. KNAUSS. There are times when I do.

Senator HOLLINGS. Well, that is organized.

Senator RUDMAN. I want to come back to the previous line of questioning of the chairman. Looking at this Nexrad contract, we were told it was going to cost about $450 to $500 million, and the latest estimates in your submission for a higher amount.

Dr. KNAUSS. Excuse me. Are we talking about Nexrad?

Senator RUDMAN. Did I say Nexrad?

Mr. CASTLE. You said Nexrad.

Dr. KNAUSS. You said Nexrad. That is right.

Senator RUDMAN. You have got $152 million of your money in this three-agency procurement is my understanding.

Dr. KNAUSS. That is for Nexrad.

Senator RUDMAN. On Nexrad. Let's get together here. What is Unisys making?

Mr. CASTLE. The Nexrad.

Senator RUDMAN. That is what I thought. What are they disputing at this point? Are they saying that you have changed the specifications on them?

Mr. CASTLE. They are maintaining that we have changed the specifications and that they have had to do work that wasn't required by the contract; they are saying that they are entitled to an economic price adjustment, which is a technical term under the contract. There are a whole cadre of kinds of claims there.

Senator RUDMAN. Is there any validity to any of those claims?

Mr. CASTLE. Yes; there is. We have discussed this with them, and we have indicated that we see validity to some of their claims, but our view as to what the appropriate overrun from a cost standpoint should be is a lot different than theirs.

I am hopeful, as I say, Senator, that we are going to be able to resolve that. I want desperately to resolve it, because I think it is in the country's best interest.

Senator RUDMAN. Certainly changing the contract at this point would be very expensive and probably fraught with the risk of delay. Am I correct?

Mr. CASTLE. Absolutely.

Senator HOLLINGS. Excuse me. Where is the money going to come from to pay?

Senator RUDMAN. That is a very good point.

Mr. CASTLE. One of the things that we have talked to them about is the difficulty that we would have paying additional funds in 1991 and 1992, so that is one of the issues that is on the table.

SATELLITE PROCUREMENT

Senator RUDMAN. Of the $300 million in your program increases in fiscal year 1992, by our calculation, $220 million of it is directly related to satellite procurement or Weather Service modernization.

Mr. CASTLE. Yes; you want to keep in mind that $101 million of that has nothing to do with GOES. That has to do with the polar program and the ups and downs there.

Senator RUDMAN. I understand that, but that is in the satellite area.

Mr. CASTLE. I understand that. Well, you made the point, and I think that it was a legitimate one when the Secretary was here, that the NOAA hardware systems are eating NOAA's budget and, to a lesser extent, the Department of Commerce's budget.

Senator RUDMAN. Totally.

Mr. CASTLE. I think that is a very valid point.

Senator RUDMAN. That is like the Federal budget. The entitlement programs and interest together are going up. They are going to be 70 percent of the budget by 1995, and we won't have enough for anything else. That is, in a smaller way, what is happening to your budget. These satellite programs are necessary, but they are so out of control, based on current budgetary projections, that I seriously doubt if some of the other programs, which are very important for this country, and the chairman has referred to some of them, and I am sure my friend from Oregon will refer to others that are of great interest on the west coast; we are not going to have any money for those. We will be lucky if we have money just for the satellites unless we have a massive increase in the Commerce budget, and thus, the NOAA budget, which I don't see. So what do you do? You tell us. What do we do?

Dr. KNAUSS. We either run with fewer satellites or we face the problem you do.

Senator RUDMAN. The lesson learned here is not a new lesson. It seems to be history repeating itself, and I don't levy the blame on the present cast of individuals here. It is a question of people being overly optimistic as to what technology will cost, and we have the greatest example of that in the Defense Department, although getting better as the years go by. We have the same problem with NASA; we have the same problem here.

I think it is a national decision, and I would hope the Secretary would elevate it to the level that the President is going to have to, himself, make a decision as to what we are going to do with these satellite programs. We can't take this tiny little agency and have it devoured so it has nothing left of its resources other than these, high-cost, high-tech satellite programs. I hope you will address that with the Secretary.

Dr. KNAUSS. Senator, there is one point, one part of it which we are addressing, the so-called Augustine Commission which looked at NASA. The one thing you want to remember is that in the beginning, NOAA operates satellites and is not in the business of developing satellites.

Senator RUDMAN. You are just in the business of paying for them.

Dr. KNAUSS. That is right, but in the beginning, what was done was that NASA would develop and pay for the first one. Then we would buy the next three, four, five or six in that category, and that is a reasonable thing, perhaps, for NOAA to do, because you know what the price is and you can budget for it accordingly.

Sometime in the early eighties, NASA decided they were no longer going to live up to that agreement and we found ourselves paying for the development of a new satellite. NASA is managing it, and NASA and NOAA and the contractor share the blame with respect to the fact that we underestimated the technological improvement that would be necessary.

Senator RUDMAN. They share the blame, but you bear the consequences.

Dr. KNAUSS. We bear the consequences.

Senator RUDMAN. That is my point.

Dr. KNAUSS. One of the things that the Augustine Commission recommended was that we go back to the original memorandum of understanding between NASA and NOAA so that NASA again takes on the responsibility of developing and paying for No. 1 of any one of the satellites, and we are meeting with NASA and OMB on that issue right now.

Hopefully, we can get that agreement back in place.

If that happens, NASA is in a much better position than we are to essentially deal with fluctuations in the cost of new satellites. I am very hopeful that we can get that agreement back in place.

Senator HOLLINGS. Excuse me. With that last conclusion, where did you get that idea? I just picked up where House Budget Committee Chairman Leon Panetta says, "Let's cut NASA $1.5 billion," cut them with just inflation and give them no capability to go forward with any kind of space station or any kind of new program, the Planet Earth and the Sally Ride and some of the others. We have got a lot of NASA programs that are ongoing. Now I am coming to another subcommittee hearing, "This is wonderful—lets give programs back to NASA. They have got the money, and let them care for it."

Dr. KNAUSS. Senator, it is always easier to think that other agencies have less problems than you do, but let me indicate at least one reason why it makes sense for this to be in NASA. At any given time, NASA has five, six, eight new satellites under development.

Some of them are running very well; some of them are like the new GOES satellite, which are going up by a factor of two. If you have eight satellites that you are trying to develop simultaneously, your contingency funds for each of these can simply be transferred from program to program. If you are only developing one satellite, if it is going well, you have no problems.

But if you have a problem like we had with the GOES, you have the kind of problems that we are addressing here today.

The argument is that if you have an agency that is trying to do a lot of satellite development at one time, they are the ones that are better off trying to do this rather than us.

Mr. CASTLE. Moreover, I am persuaded, based on 3 years that I have been involved with this, that there is a tremendous opportunity for NASA and NOAA to jointly fly instruments, and I think much more could be done in that line to save the taxpayers some money. I would be hopeful that over the next several years we might be able to achieve some consensus on that.

Senator HOLLINGS. We will see. I can see here in this subcommittee, if the colleagues will indulge me; we are always meeting in an emergency session over at the White House. We did it with President Reagan and Jake Garn. We had two of those meetings, one with Howard Baker and most recently. Now they are going to have another emergency meeting trying to get the money just to keep the programs going over there.

Senator RUDMAN. That is very true.

Senator HOLLINGS. It seems like the Office of Management and Budget, when you say you meet with them, get some feel for this overall. I mean, it is nice and pretty to holler, "Summit agreements." If you are going to want any increase, you are going to have to take from another program. What it says is, "If you want to continue the contract, you are going to have to take from another."

They don't even look at it that way. The summit agreement is a political document; it is not a budgetary document.

Excuse me.

Senator RUDMAN. That is all right. Mr. Chairman, I would just observe that back in 1983 and 1984, when this proposal came up, there was great concern on both ends of this table about putting this rather fragile agency in the business of having anything to do with developing launch services or anything else. Of course we were right, but the administration decided differently. I just don't think NOAA ought to be involved in this. It is a space program. You ought to develop the consensus for it, and they ought to worry about everything else.

Dr. KNAUSS. I went back and looked at the record. NOAA did protest.

Senator RUDMAN. Oh, I am aware. I am aware.

Let me just change the subject, because this one is depressing. [Laughter.]

NOAA'S FISHERIES PROGRAMS

The next one is not any more elevating, but the fact is, by the way, that the one thing that we have to face here is that we have got something called a budget summit agreement which everybody has pledged to live up to, whether we now like it or don't like it, agreed or disagreed, and there are all kinds of differences on this panel about it. Nonetheless, it is there, and we don't have the flexibility to move. I see an inexorable crossing of lines here between costs and resources at NOAA.

If I were sitting where you are sitting, I would really be worried about it. I would be pulling out all the stops to get people to understand this problem and start addressing it, because we are not going to address it at 2 o'clock some morning in this hearing room when we are doing the final conference or markup or what-have-you for your budget. We are just not going to be able to do it, because I will tell you, I will not support any breaking of that budget agreement whatsoever without some positive guidance from the administration as to where they want that to come from.

So I just think you ought to know that. In years past, we have managed to kind of slip it under the table because it was necessary. We are not going to do that this year, I don't believe.

Let me turn to the North Atlantic fisheries. As you know, the George's Bank groundfish fishery is about collapsed, and I notice in the 1992 budget that you are requesting $1 million to improve groundfish monitoring in Alaska. I think that is important, and I support it.

At the same time, you are proposing to eliminate $500,000 provided by the Congress last year for the Gulf of Maine groundfish monitoring. I looked further and I find in 1991 you are going to support $20 million for various activities for Pacific salmon and Columbia River hatcheries and so forth, such as support of the United States-Canada Salmon Treaty. I support that. I have always supported that. I think that is very important. I am obviously not from the Northwest, but I support it because I think it is very important for our own interests.

But looking at what we are doing in Alaska and the Pacific Northwest, how come we are going to eliminate the paltry $500,000 for Atlantic salmon research in the Northeast? You will have nothing left if that is done, zero. There will be nothing spent. Why are we doing that?

Dr. KNAUSS. Senator, we addressed the issue earlier. I do have to budget to a figure, and there are a lot of programs that I would like to support but I am not in the position to support. We had to make some very difficult decisions as to which ones we would come in with and which ones not.

In the overall scheme of things, we think that replenishing the George's Bank fishery is a priority. We want to try to bring that back to the level of the late seventies. That would be our primary goal, and that is what we are aiming for.

Senator RUDMAN. How are you doing that by eliminating this money? I don't understand that.

Dr. KNAUSS. We had to look at, given the certain amount of money that we could pay for any of these programs, which were the ones which we thought were most important.

Senator RUDMAN. Yes; but you are putting $1 million into groundfish monitoring in Alaska. That is fine. You are putting $20 million into the United States-Canada Salmon Treaty monitoring and the Columbia River hatcheries, which I am all for.

Senator HATFIELD. I am all for the Columbia River hatcheries as well.

Senator RUDMAN. I had better be for them, considering who is on my right, but then I look at this; we had $500,000 provided by the Congress last year for the Gulf of Maine groundfish monitoring, and that is gone. I mean, there ought to be a balance in your allocation; $20 million to the Pacific Northwest and zero for the New England coast? What kind of sense does that make? It doesn't make any political sense, I tell you that, in case you missed the point. [Laughter.]

OK. I understand. The chairman has just given me the answer. We will take care of it. I really don't think that it is very provident to use it all in the one area.

Senator HOLLINGS. Prudent, prudent.

Senator RUDMAN. Provident. I picked provident very carefully. [Laughter.]

All right. I have a lot of questions for the record. Let's go on to our ranking member here.

COLUMBIA RIVER PROGRAMS

Senator HATFIELD. Mr. Chairman, thank you very much. I associate myself with the comments made by this dynamic duo. We have 13 subcommittees of the Appropriations Committee, and I know no subcommittee that functions as beautifully as does the Hollings-Rudman and the Rudman-Hollings combination, and I am privileged to be part of their team.

Mr. Chairman and Senator Rudman, let me just make one or two comments to outline the purpose of my question. As you know, the major source of energy for the Pacific Northwest, and now for southern California, is flowing out of the hydro system that was developed many years ago starting with Bonneville Dam in 1935.

We now have built interstate interties with southern California, and we wheel surplus power from the Bonneville system to southern California at peak times, and then they, in turn, wheel power back during their peak time.

So we are integrating an entire west coast, plus the fact this whole system is tied with treaties to Canada because the head waters of the Columbia is the Frazier River in Canada. We also have treaties which the courts have, within the last decade, upheld with the Indian tribes and the Indian nations. So they have a percentage of the fisheries produced in that river.

When the dams were first constructed, they enacted what they call the Mitchell Act. The Mitchell Act was to mitigate the loss of salmon for the intrusion of the river with these dams.

This means simply that I am not talking about a parochial interest. Oregon, Washington, Idaho, western Montana, southern California depend on that river in great part for energy. In addition to that, we have, of course, the fisheries and the problems with those fisheries.

Mr. Chairman, last week the National Marine Fisheries Service listed a rule for designating the Snake River sockeye salmon as an endangered species. Probably by June, we will have four more salmon that will be in this same process, leading to a listing as an endangered species.

There is an environmental organization in our State that says they have 100 more possible candidates for endangered species listings in the Columbia-Snake systems.

The Corps of Engineers dredges the river for the purposes of commerce. Twelve billion dollars of commerce flow through the Port of Portland alone. We also have irrigation in eastern Washington, eastern Oregon, that drawdown water from that river that produces the foodstuff, the grain that goes out through the Port of Portland, and the many other inland ports. This grain is the largest dry cargo on the west coast and helps reduce our balance of trade deficit. I don't know what we would do without the agricultural exports. In addition to that, we have, of course, all of the other uses of that river.

Now, a listing of one fish, Dr. Knauss, one fish could impact upon the production of power; the flow of commerce; the irrigation of agriculture; the recreation, all of these uses of the river, so when you begin to talk about 5 or 10 or 20 or 100 fish, you are talking about the possibility of shutting down that river or reducing the power generations of such degree that it could cripple the entire Northwest.

In April last year, when we received a heads up on the first filing of this petition, 8 months before you presented your budget, I asked the Governors of Oregon, Washington, Idaho, and Montana to come together to form a regional salmon summit to get ahead of the curve to build a biologically defensible recovery program for any listing; getting all the groups together, the Indian tribes; the Corps; all of the Federal agencies; the Bonneville Power Administration; the utilities, the PUD's; the co-ops; the rural electrics; the municipalities; the IOU's, all of them.

Some 30 interest groups came together, including the environmental groups. They completed their major meeting last month, and now the Governors are putting together a preemptive action which we hope will get ahead of the curve because we already are in up to our eyeballs with the spotted owl. We don't want to see another spotted owl situation on the endangered species.

That all leads up to the simple question: Eight months after the first filing, you presented your budget, and there wasn't one penny in that budget for the Mitchell Act hatcheries. Now, hatcheries don't answer the entire problem. I am not suggesting that, but I am puzzled that the NMFS, which is part of your agency, is pursuing a tract here saying, "We, in all probability, will start listing endangered species of one salmon, four salmon," and by the time this budget is adopted, it will be probably five salmon altogether, and yet you, within this same agency, have not requested moneys. Accordingly, this committee has a right to go behind the process. We know you are up here representing the administration's budget; and were it representing your own priorities, it might look different, we understand that.

To clarify, could you tell me what did NMFS ask for as they presented their budget to you? What did NOAA ask of the Secretary? What did the Secretary ask from OMB when he presented the budget as far as Mitchell Act hatcheries are concerned?

Dr. KNAUSS. Senator, I think I will have to provide that information for the record.

Senator HATFIELD. If you would, please, because I don't want to crawl up your frame on this. It is like the last decade, and Mr. Chairman, if you will recall when Warren Magnuson was on his committee, and when I succeeded him, there hasn't been a Democrat or Republican President that has honored the Mitchell Act since, and in part, I think it may be for some of the same reason about your problem, Senator Rudman: They knew that we would pick it up on this committee, and we have had to do that for fisheries.

[The information follows:]

Last week the National Marine Fisheries Service announced its proposed rulemaking to designate the Snake River sockeye salmon as an endangered species. While this action was not unexpected, it still sent shock waves through the Pacific Northwest, and increased the fears of many individuals and user groups who rely everyday—in some way or another—on the Columbia and Snake Rivers. Those fears probably will resurface again in June when the National Marine Fisheries Service announces its intentions with regard to four additional endangered salmon petitions which also are being considered.

When the first endangered species petition was filed on the salmon last April, many people in the region recognized immediately the potential impact that a threatened or endangered listing could have on the economic and social fabric of the Pacific Northwest. For this reason, I requested that the governors of the four states—Oregon, Washington, Idaho, and Montana—convene a salmon summit to begin developing a biologically supportable management plan for the salmon runs in question. Although the salmon summit concluded its last meeting over a month ago, the final report has not been forwarded to me, and it is my understanding that discussions involving smaller groups are continuing.

In short, Mr. Chairman, the residents and elected officials in the Pacific Northwest realized that quick and decisive actions were required if we were to have any hope of avoiding another spotted owl-type of environmental debacle.

Unfortunately, I can only conclude that the administration is not nearly as tuned-in to the seriousness of the endangered salmon problem as the people in the Northwest. And how do I know this, Mr. Chairman? All I have to do is look at NOAA's fiscal year 1992 budget request for the Mitchell Act hatcheries on the Columbia River. I find it absolutely incredible that the NOAA budget contains no funding whatsoever for these hatcheries—hatcheries which were built specifically to mitigate for the adverse impacts that the federal dams on the rivers system would have on the salmon runs.

While it has become a common occurrence over the last decade for the administrations' budgets to contain no Mitchell Act funds, in light of the endangered species petitions filed last spring—some eight months prior to the release of the fiscal year 1992 budget—I had hoped that the administration would rectify this continuing oversight and exhibit some decisive leadership on an environmental issue with national and international ramifications.

Unfortunately, Mr. Chairman, once again the administration has punted its fisheries responsibilities to the Appropriations Committees. Once again, we will have to pick up the ball and make the hard choices which the administration has refused to make. And, once again, I am confident that the Chairman and other Members of the subcommittee will find the dollars to ensure that these essential programs are adequately funded for the next fiscal year.

Finally, I wonder what the fiscal year 1993 NOAA budget will look like. Next year at this time it is very likely that at least one run of Columbia and Snake River salmon will be officially listed as an endangered species. I can only hope that the administration will take this matter seriously when that event occurs.

At this time, Mr. Chairman, I would like to pursue a few fisheries-related questions with today's expert witnesses.

PACIFIC DRIFTNET FISHING

Senator HATFIELD. I see that you have listed, as far as an international problem, on drift netting, a request. Would you tell me what that is going to be used for in the drift netting problem? Mr. Chairman, the Japanese, the Koreans, the Taiwanese and so forth, all have interest in these anadromous fish that travel the Pacific, and we are convinced and our Government has taken a position, that the drift netting must end in the Pacific, not only because of fisheries, but all the other mammals and wildlife that they pick up in these drift nets that go 25, 30 miles out across the Pacific, and scoop up everything in its path, like a vacuum sweep.

Dr. KNAUSS. Senator, let me point out that there is a U.N. resolution which ends by 1992. The point is that that will end unless those nations that pursue the drift netting can show that drift netting is not endangering fish, marine mammals, and that kind of thing. The further proof there is upon the Japanese, the Taiwanese, and others. We feel that it is important for we in the United States to at least provide enough information on our own or to be in a position to respond to any provisions brought forward by those countries in case they wish to argue to the contrary.

We think there will be no drift netting within a couple of years.

We are in the process now. We have observers on these ships as do the Japanese and Taiwanese. We will continue to do this. We are developing our own information as to what is happening on this issue.

Senator HATFIELD. As you may know, I met with the Japanese fisheries representatives in Tokyo a few weeks ago, and also the Japanese Foreign Office. I was very happy, very heartened to have the State Department inform me that we will tie this and link this issue with all of our relationships with Japan, because our State Department is determined to move on this.

Now, you are saying to me this $1 million can help provide the scientific data. The fishery people of Japan said, "Why, we are only drift netting to produce the science."

So consequently, you are telling me we can offset that so-called science, whatever it may be. They did not present me with a new science with this particular appropriation.

Dr. KNAUSS. That is part of it, yes, sir.

Senator HATFIELD. At least in part?

Dr. KNAUSS. Yes, sir.

ENDANGERED SPECIES LISTINGS

Senator HATFIELD. Do you have any comment about this relationship between what is happening in the Endangered Species Act with the listing of the salmon and what recovery programs that we may be contemplating for 1993 and 1994?

Dr. KNAUSS. Senator, I am not much of a geneticist. As you well know, there are many types of salmon. The problem of endangered species, like the sockeye salmon, is that that particular stock of sockeye salmon in the Snake River may come within the definition of the endangered species.

Senator HATFIELD. It is a wild salmon, as opposed to a hatchery variety. It runs wild. That is what we are talking about.

Dr. KNAUSS. They are wild salmon. Hatchery salmon cease to be wild salmon, but we do indeed have salmon hatcheries. The administration position is that the hatcheries should be supported by the Bonneville Dam people. That is the reason; it should be their responsibility rather than the Federal Government.

Senator HATFIELD. But that is not the law, Dr. Knauss. The law is the Mitchell Act. Are you aware of what I have tried to do in terms of motivating that very action you are talking about? Two years ago, when I could see this coming down the track, I got together the tribes, the Bonneville Power Administration, the utilities, et cetera and I said to them, "We are funding this only because my colleagues on the Appropriations Committee have responded to the requests of Senator Magnuson over the years and now to myself and my requests. I am not always going to be here. We have got to develop a self-financing plan. You can't manage fish or any other resource on an annual budgetary basis," and I am saying to them, "put together a plan that we can implement, hopefully, in the next few years, that will be self-financing. We don't have to bother this committee or you," and frankly, the ratepayer should pay for that, but also, the Federal Government, because it was a Federal intervention of that river, and until that, you say, "Well, they should." Dr. Knauss, you are required by law now to do it.

Senator RUDMAN. What year was that law passed?

Senator HATFIELD. 1935–36.

Dr. KNAUSS. Senator, I would be very happy to meet with you on that.

Senator HATFIELD. Do you think the summit has helped any way in your process?

Dr. KNAUSS. Yes, sir; this problem of the salmon as endangered species, as you so eloquently pointed out, is going to have enormous economic consequences to the Northwest. The fact that you brought these people together 8 months ago and got ahead of the curve is the one shining light, if you will, in what is clearly going to be a very difficult set of negotiations.

We have 1 year, as you know, between publication in the Federal Register and the date to respond and come up with a plan.

But you have helped us. Your starting 8 months before we even put it in the Federal Register is giving all of us an opportunity to get started on this program earlier. I think by bringing people together and with your stature as a Senator, I think you have done a marvelous job. I am hopeful that, while this will not be an easy problem to resolve, it will be a somewhat easier problem to resolve because of what you have done.

Senator HATFIELD. Dr. Knauss, we want to work with you. We are not adversaries, and I just want to be helpful any way I can, but it does disturb me a little bit when I see one agency of NOAA pursuing a tract and another agency or the NOAA as itself not really taking the compensating role that it should be playing in offsetting the salmon loss through the Mitchell Act. Bonneville is putting up energy; Corps of Engineers is putting up energy. We are putting up all the energies as much as we can to put energy on the NMFS people.

Dr. KNAUSS. I promise you that we will look very hard on this issue.

Senator HATFIELD. Mr. Chairman, it is a very interesting dichotomy; talk about the complexity of fish. We have what is called the squaw fish in the Columbia River, and it is a predator. It eats the salmon. We try to kill it. We try to destroy it. We are spending taxpayers' money to destroy it.

Down in Colorado, a slight variation, a genetic variation but still the squaw fish, is being listed as an endangered species. I told Tim

Wirth he can come up and have all of the squaw fish he wants in the Columbia River and take them back to Colorado.

But that is one of the inconsistencies of this endangered species program.

Senator HOLLINGS. That is the Government. [Laughter.]

Yes, siree.

Senator HATFIELD. Thank you, Mr. Chairman.

Senator HOLLINGS. Thank you.

Dr. Knauss, we appreciate it. We are going to watch very closely the Nexrad and GOES decisions. We will be here, Senator Rudman and myself, shortly in the conference committee. It will be like tying two cats by the tails and throwing them over the clothesline and clawing each other for money, and when it comes to your programs, you say, "Oh, man, there is a lawsuit here," and you say, "they aren't going to complete that. Don't give money to that thing, it is broke. Don't worry about that, this, that."

How do you even make the argument for your share and transfers and everything else into these programs unless we get some kind of guidance from you?

Dr. KNAUSS. Senator, we will keep you informed on a weekly basis.

Senator HOLLINGS. Please do. We appreciate your appearance here this morning.

ADDITIONAL COMMITTEE QUESTIONS

Thank you very much, Dr. Knauss. We will leave the record open for further questions. We appreciate you and your colleagues appearing here this morning.

Dr. KNAUSS. Thank you very much.

[The following questions were not asked at the hearing, but were submitted to the administration for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

NEXRAD WEATHER RADARS

QUESTION:

What is the true story regarding the NEXRAD program? What specifically is wrong with the NEXRAD systems produced to date? Are the technical problems ones that NOAA could live with, but the Air Force and Federal Aviation Administration could not?

ANSWER:

The Department of Commerce's legal position is that the prime contractor, Unisys, appears unwilling to deliver NEXRAD weather radar systems that are in compliance with the technical specifications at the agreed price.

The technical problems with the system are generic and mainly deal with the development effort which is not yet complete. Software errors still exist in numbers that need to be reduced to use the system in an operational environment without significant hindrance to mission capability. Some minor deficiencies exist with regard to system functionality. The major technical problem with the system lies with the inability to isolate hardware faults to a technically compliant level. The resulting impact if not corrected, is that in order to meet mission availability requirements, the Government will incur higher costs for spares (i.e., more spares will be required on-site to compensate for the degradation in system maintain-ability). The consensus of the agencies is that the system will be ready for operational deployment only when it is technically compliant.

QUESTION:

Since NEXRAD was bid as a fixed price contract, how valid are the contractor's claims?

ANSWER:

Essentially, Unisys has alleged that the Government's direct and indirect actions and inactions have caused it to spend more money than it had planned to in performance of its contractual obligations. Since NEXRAD is basically a fixed price contract and the contractor is legally required to deliver what was contracted for, the way for the contractor to attempt to recover costs for the extra work allegedly caused by the Government, is to submit claims. The government believes Unisys claims for out-of-scope work have little or no merit and would be unlikely to be sustained in litigation.

As a separate exercise, the Government is examining the validity of the Unisys claims submitted to date and the possibility of terminating the existing contract with Unisys, and going to an alternate source.

QUESTION:

What are your/our options? Is it possible to bring on a second source?

ANSWER:

A special team has been established to assess the following options vis-a-vis the current Unisys contract:

1. Status quo, continue with Unisys. Continue with the current contract for limited and full scale production. Current claims and disputes between the contractor, Unisys, and the Government to be settled under the appropriate audit/appeals process.

2. Comprehensive Settlement with Unisys and equipment upgrade. Negotiate a settlement of all outstanding contractual issues resulting in new program costs and schedule. This option assumes that Unisys completes all aspects of limited and full scale production, and further assumes that a comprehensive settlement with Unisys would offset their claimed losses, thereby making them a willing participant in the program. Settlement will require a major change to the hardware during the full scale production phase of the contract. Such change, successfully implemented, will reduce long term logistics costs and provide a technologically superior system.

3. Settlement with Unisys Hardware/Third-Party Software. Negotiate a settlement of all outstanding contractual issues resulting in new program costs and schedule. Initial product baseline with partially compliant software would be established. A "third party" would upgrade the software to comply with the NEXRAD technical requirements with full capability provided at a later date. This assumes that a settlement with Unisys would offset claimed losses, thereby making them a willing participant in the program.

4. Terminate for Default and Directed Procurement. This option assumes that Unisys would be terminated for default immediately. Nothing would be retained from the current effort. The contract would be replaced by directed procurement to Raytheon. This alternative offers the possibility of a more maintainable system with upgrade potential and lower long-term logistics costs.

5. Directed Procurement for Full Scale Production only. Full-Scale Production (FSP) would be awarded to Raytheon by directed procurement. This option offers access to the network of ten Unisys limited-phase production (LPP) radars. The Government would gain operational benefit and experience (applicable to the Raytheon FSP units)

from these radars. It also offers the maintainability and enhancement potential of the Raytheon system.

6. Terminate for Default and Replace by Competitive Contract for Commercial off-the-shelf Doppler Radar. This does not meet NEXRAD requirements and is included only as a last-ditch position for a Doppler weather radar with limited automated capabilities.

QUESTION:

Given that the current deployed radars are 1950's vintage, how long can they last before we have no radar coverage in the United States?

ANSWER:

It is true that some current NWS radars are of 1950's vintage, we can't predict how long they will last, but we know the systems have a limited operational life due to the increasing difficulty of obtaining replacement parts for these radars. Since the mid 1980's, the NWS has undertaken measures to keep the aging radars functioning. The NWS will continue operating the present system through the deployment phase of the NEXRAD program.

QUESTION:

Since NEXRAD appears to be so far behind schedule, why do we have to move ahead now with the AWIPS and ASOS systems as proposed in the FY 1992 budget?

ANSWER:

While NEXRAD is experiencing some delay, it is important to remember that the AWIPS schedule still drives the modernization program. Also, although achievement of the full benefits of modernization is clearly dependent on having the combined benefits of NEXRAD, AWIPS, and ASOS, they have major stand alone value in their own right. For example, ASOS substantially increases the frequency of surface observations, thereby allowing a more timely, and accurate update of weather conditions. ASOS also promises to reduce the manual effort devoted to these observations. AWIPS is urgently required to replace the obsolete AFOS system.

GOES SATELLITES

QUESTION:

GOES are critically important to hurricane monitoring. As you know this is something that South Carolina and every southeast and gulf state believes is critically important. What are your backup plans if we get into a no GOES Satellite situation?

ANSWER:

The comprehensive NOAA backup plans to provide satellite data coverage in the event of a No-GOES situation were described in the recently submitted Report to Congress on the GOES Program. NOAA has in place a contingency plan which has been coordinated within NOAA, with other user agencies and the private sector, and it has been subjected to a full system test. If GOES 7 loses imaging capability, NOAA will revert to an operation based in large part upon NOAA polar-orbiting satellite imagery. Supplemental data from the ESA/EUMETSAT operational spacecraft (MESEOSAT) and the Japanese Meteorological Spacecraft (GMS), as well as from the Department of Defense (DOD) Defense Meteorological Satellite Program (DMSP) polar satellites, will also be disseminated through NOAA's communications network.

Hurricanes and other disturbances over the tropical oceans are of major concern in planning for gaps in GOES data. Procedures are in place for special collections of high resolution data over these areas by NOAA's polar satellites, storing the data on board, and then transmitting the data to NOAA's ground stations. These data would receive priority processing and be used to augment the data flowing over high-speed digital data links to the major NWS National Centers (Meteorological, Severe Storm, and Hurricane).

NOAA'S FLEET REQUIREMENTS

QUESTION:

How critical is the NOAA Fleet's status, and what plans do you have to address this situation?

ANSWER:

NOAA has sufficient capability to meet all its programmatic and statutory requirements in the near term. An evaluation of possible future actions regarding the fleet is underway.

QUESTION:

Could NOAA carry out its missions without a fleet of ships?

ANSWER:

No.

QUESTION:

How much will it cost to rebuild the NOAA Fleet and maintain current capabilities? How much would be needed for acquisition of ships versus repair and maintenance?

ANSWER:

NOAA is currently evaluating possible future actions regarding the fleet. The cost of any fleet rehabilitation program will be a function of the days at sea to be provided and the mix of ships needed to provide these days at sea. No decision has been made at this point regarding these specific issues or the overall need for such a program.

QUESTION:

Have you examined the Navy's oceanographic vessels to determine if any of them can be used by NOAA as the Navy reduces its own fleet?

ANSWER:

We are examining the Navy's oceanographic vessels and are continuing discussions with the U.S. Navy to identify any of their vessels that could be used or converted to meet NOAA's mission requirements.

GULF AND SOUTH ATLANTIC FISHERIES DEVELOPMENT

QUESTION:

Are you satisfied that all audit issues concerning the Gulf and South Atlantic foundation are now resolved? When will new grant funds under previously-approved awards be obligated to the foundation? Why has it taken so long to resolve this matter?

ANSWER:

Yes, NOAA is satisfied that all audit issues concerning the Gulf and South Atlantic Fisheries Development Foundation are now resolved. NOAA has recommended and the Office of the Inspector General (OIG) has agreed that of the nine pending MARFIN and S-K proposals of the Foundation, five will be awarded as proposed; two will be awarded directly to the sub-recipient, if agreed to by the sub-recipient, with a sub-award to the Foundation commensurate with its involvement in the project; one will be withdrawn, and one will be deferred pending a determination as to whether the needed information can be obtained from an existing source. The Foundation has agreed to these recommendations. The five proposals to be awarded as proposed are currently being processed by the NOAA Grants Management Division, after which they will be submitted to the Department of Commerce's Financial Assistance Review Board (FARB). Following FARB's clearance, funds will be obligated to the Foundation, probably about the first of May. The two proposals which will be awarded directly to the sub-recipients must be revised to reflect the reversal of roles between the Foundation and the sub-recipients and resubmitted. Upon receipt by the NOAA Grants Management Division, these revised proposals will be expeditiously processed. With regard to the proposal on which funding is being deferred, NOAA expects to make a decision by the end of May as to whether or not to proceed with this award. Resolution of this matter has taken a long time because of initially differing views between the OIG and NOAA, the lengthy negotiations needed to accommodate these differences, and the requirement for additional analyses and documentation to resolve the audit issues.

QUESTION:

In your view, what is the role of the foundations in implementing industry grant programs such as S-K and MARFIN?

ANSWER:

The Foundations, as eligible S-K and MARFIN applicants, compete on an equal footing for grant funds in these industry grant programs, along with other eligible applicants such as universities, state and local governments, industry associations, private organizations, individuals.

QUESTION:

Experience has shown us that industry involvement is essential for development of solutions to difficult problems like reducing the catch of sea turtles in shrimp trawls. Aren't the Foundations necessary to assure that industry involvement?

ANSWER:

Yes, the Foundations can play a role in bringing together disparate segments of the fishing industry in addressing difficult fisheries problems, the solutions to which are often proposed in NOAA grant applications. However, the Foundations' grant proposals are evaluated on their merits, along with the proposals of other eligible applicants.

NOAA SYSTEM PROGRAM OFFICE

QUESTION:

Through fiscal year 1991, Congress has appropriated over $800 million for the new series of geostationary (GOES weather satellites and more than $350 million for the new weather service radar system (NEXRAD). Despite these funding levels, the new GOES satellite will not be ready for launch for over a year and a half. A recent New York Times article stated that the NEXRAD plan "is so flawed that the best solution may be to cancel the $700 million radar contract and begin with a new manufacture." Now, we are told that these problems will be resolved by establishing a new systems program office at NOAA that would transfer control of weather service modernization out of the National Weather Service. What's broken and how would the NOAA System Program Office fix it?

ANSWER:

NOAA has encountered significant problems in acquiring major advanced technology systems, for example: GOES, NEXRAD, and AWIPS. NOAA's establishment of the Systems Program Office (SPO) is meant to relieve this situation by centralizing the appropriate management and technical skills under an experienced systems development program manager reporting directly to the Deputy Under Secretary for Oceans and Atmosphere. The purpose of the change is to strengthen the program management by assigning full responsibility for the design, procurement, and acceptance of new systems to a single management office reporting directly to the highest levels within NOAA. We expect that creating this office will strengthen program management and integration. The resulting relief to the NOAA line organizations would allow them to concentrate on the modernization and restructuring aspects pertaining to meteorology, facilities, training, staffing, and, ultimately, operating these new systems.

QUESTION:

What are the cost implications, and timetable for these changes?

ANSWER:

Initial resources to set up the SPO have been reprogrammed from operating programs in NWS and NESDIS based on Congressional concurrence of our reprogramming notice. The FY 1991 cost is estimated at $1,300K and the annualized level for FY 1992 and beyond would be $2,230K. NOAA plans to establish the SPO as quickly as administrative procedures permit, with formal actions having begun in April 1991.

QUESTION:

What steps are being taken to ensure that the reorganization does not result in conflict between procurement activities and the day-to-day operations of the National Weather Service?

ANSWER:

The functional responsibilities of the SPO and National Weather Service are clear cut. There will be very close cooperation between the SPO and NOAA operating offices to ensure that the necessary high level of program integration and scheduling activity are accomplished effectively. The SPO would be responsible for the development and acquisition of new systems while the operating offices would continue to establish requirements, operate, and maintain them.

Moving the procurement resources closer to these programs will improve integration and responsiveness without burdening procurement personnel with day-to-day operational details. It will also speed up the procurement process with additional time savings and subsequent cost avoidances accruing to the programs.

RECREATIONAL FISHERIES IN SOUTH CAROLINA

QUESTION:

For several years, the Secretary of Commerce was forced to shut the recreational fishery for both king and Spanish mackerel off the coast of South Carolina because mackerel stocks were depleted and anglers had taken their quota. In fact, I recall one year when the Secretary almost closed down the Arthur Smith King Mackerel Fishing Tournament. In addition, the South Atlantic Fishery Management Council in Charleston has set restrictive bag limits for both of these species.

What shape are these fishery stocks in at the present time?

ANSWER:

The 1991 stock assessment for South Atlantic king mackerel concluded that the stock is not overfished and that there is adequate spawning stock. The most likely estimate of Allowable Biological Catch (ABC) for the 1991 fishing season is 11.5 million pounds with a range of 9.6 to 15.5 million pounds. In 1990, the range of ABC was 6.5 to 15.7 million pounds.

The 1991 stock assessment for South Atlantic Spanish mackerel concluded that the stock remains overfished although there is some evidence of recovery. The most likely estimate of ABC is 7.0 million pounds with a range of 5.5 to 13.5 million pounds. In 1990, the range of ABC was 4.2 to 6.6 million pounds.

QUESTION:

For several years, the Secretary of Commerce was forced to shut the recreational fishery for both king and spanish mackerel off the coast of South Carolina because mackerel stocks were depleted and anglers had taken their quota. In fact, I recall one year when the Secretary almost closed down the Arthur Smith king mackerel fishing tournament. In addition, the South Atlantic Fishery Management Council in Charleston has set restrictive bag limits for both of these species. Do you anticipate that the current bag limits will continue to be necessary in both of these fisheries?

ANSWER:

Bag limits are likely to be necessary for the foreseeable future because of the trend for increased recreational fishing pressure; i.e., an increasing demand versus a finite resource. Coastal population in the South Atlantic Region increased 36 percent between 1970 and 1980. In coastal Florida the population increased 152 percent between 1960 and 1988. Between 1988 and 2010 coastal counties in the South Atlantic are projected to increases between 35 and 75 percent. In 1986, there were almost 15 million angler trips in the South Atlantic. Recreational fishing pressure continues to increase as population increases and people have more recreational time.

It is obvious from the above that the supply of mackerel is substantially less than potential angler demand. The Council will select bag limits for the 1991 season at its April meeting.

NOTE: Because king mackerel are not overfished in the South Atlantic, the bag limit is not reduced to zero if the recreational quota is reached. Thus, in the South Atlantic anglers can take the bag limit for all of 1991 regardless of the status of the recreational quota. In order to manage the fishery and prevent overfishing, a bag limit is set for king mackerel even though the stock is not overfished. This will allow sustained harvest on a long-term basis.

QUESTION:

What other specific fishery problems in the Southeast should this subcommittee know about?

ANSWER:

Shrimp bycatch, specifically red snapper and other reef fish, mackerels, flounders, and sciaenids (weakfish, spot, croaker, etc). Many species of snappers and groupers are overfished and will require extensive management to rebuild. South Atlantic sharks and billfishes are under extreme pressure and will require extensive management, as will bluefin tuna and swordfish.

The South Atlantic shrimp fishery is under economic stress and may require limited access to return to profitability. The South Atlantic, like most coastal areas, is under extreme developmental pressure and it will take major governmental action to safeguard the habitat upon which all marine fisheries depend. Endangered species, especially marine turtles, are severely stressed and continued management will be required to maintain their numbers at present levels. South Atlantic Council proposal to prohibit the use of fish traps in the snapper-grouper fishery is expected to be controversial.

QUESTION:

(A) Why have so many commercial fishery stocks been depleted since passage of the Magnuson Act?

(B) Has the industry become overcapitalized and too efficient in taking fish?

ANSWER:

(A) Three factors have contributed to the decline of fish stocks harvested by commercial fishermen. The first factor is overfishing by fishermen; second, political difficulties with allocation issues and challenges by the constituency with regard to the status of the stocks have resulted in slow responses to the threat of overfishing by Regional Fishery Management Councils (Councils) and NOAA; and third, the continued degradation of fishery habitat. As we have identified each element, NOAA has taken steps -- in concert with Councils, Congress and fishermen -- to remedy the situation.

Overfishing is the result of harvesting activities by commercial and, in many instances, recreational fishermen. New and larger vessels and gear, better electronic equipment, and a high demand for fish products coupled with open access to most fisheries has led to a mismatch between the size of the resource and the effort employed. NOAA and the Councils have introduced different forms of management measures in attempts to curb fishing effort, but to little avail when there is open access to the fishery. Currently, seven of the eight Councils are considering access control programs for fisheries which they manage and two such programs are in place. NOAA believes that transferable fishing privileges or "individual transferable quotas" (ITQs) may be an appropriate free-market approach for some fisheries, while other forms of access control or fishing privileges may be appropriate for other fisheries. These access controls are being discussed widely by industry, Councils and the National Marine Fisheries Service (NMFS).

Councils take considerable time and care in developing fishery management plans. They are public fora and the debates on fishery management are protracted. Once a plan is submitted to NOAA, it moves on a short timetable -- 95 days from submission to approval or disapproval by the Secretary, including concurrent reviews by other agencies and a substantial public comment period -- and efforts are made to streamline this further in emergency cases. However, harvesting does not cease while plans are being developed, and stock depletion has occurred while Councils struggle to reconcile competing interests in the fishery. In an effort to reduce these time lags, NOAA has stressed that fishery conservation is "job one" and has taken four steps to emphasize this.

First, every Council is required to provide a definition of "overfishing" for each stock under management; this definition limits the allowable take from a fishery and triggers stock rebuilding and effort reduction measures. Second, NOAA is improving its scientific capability to assess stocks and evaluate ecological, economic, and social impacts of alternative management measures. NOAA now requires each Fishery Science Center and Region to provide Councils with an annual Stock Assessment and Fishery Evaluation (SAFE) report. This report is a principal base for Council management actions, and provides a compendium of data on the fishery in question. Third, Councils and NOAA have developed and implemented framework mechanisms for fishery management plans which permit in-season adjustments of allowable catches as circumstances require. These management actions, often implemented after 48 hours notice, allow fishermen to take a full harvest while preventing overfishing. Finally, NOAA has emphasized the role of Council members as trustees for the resource and not as partisan representatives.

Degradation of habitat is continuing as the human population of coastal regions grows. Non-point source pollution of estuaries and coastal wetlands, increasing use of waterways for commerce and recreation, and the bulkheading and filling of wetlands have decreased the availability of habitat for marine fish. While it is still unclear as to the magnitude of the impacts of habitat alteration on commercial and recreational fisheries, initial studies show that fisheries may be highly stressed in urban coastal areas. For example, NOAA studies of pollution in the river system around Seattle, WA show that as much as 35 percent of the fish population in highly polluted waters show signs of stress, such as high mortality rates, and necroses. NOAA has commented on habitat alterations as part of the Clean Water Act section 409 reviews, and the recent amendments to the Magnuson Act call for Councils to review and comment on Federal agency activities which may alter habitat. NOAA's coastal ocean assessment program (COAP) will strengthen the scientific basis for assessing impacts of habitat alteration, and NOAA and Councils will continue to ensure that habitat concerns are heard and addressed by other Federal agencies.

(B) The commercial fisheries of the United States have adapted and expanded in the past fifteen years. The passage of the Magnuson Fishery Conservation and Management Act (Magnuson Act) in 1976 fostered substantial investment and rapid development of the fisheries. The Americanization of the fisheries has been virtually achieved.

Between 1976 and 1988 a major shift of investment and strategy occurred within the industry. While the numbers of small boats declined by 19 percent to 69,600 craft by 1988, the number of larger vessels increased by 40 percent to 23,300. Bigger fishing and at-sea processing crews needed for these larger vessels resulted in a 58 percent increase in employment in the industry, rising from 173,610 persons in 1976 to 273,700 persons in 1988. The improved technologies incorporated in the new and larger vessels also meant a further increase in fish-catching power. The units of effort represented by the 1988 fleet were an estimated four-fold increase over the units of effort employed in the United States fisheries in 1976.

From a fishing industry of relatively small vessels and small investments in 1976, an industry which now operates large fleets of factory-trawlers and other catcher-processor vessels has emerged. In 1990, 64 factory-trawlers fished in the Alaskan groundfish fishery in contrast to 1980, when one factory trawler processed a mere 900 metric tons of cod. The average length of these vessels is 231 feet, and their combined harvesting and processing capacity is estimated to be 2,336,000 metric tons annually, or twice the allowable biological catch of Alaskan groundfish. While most of the large catcher-processor vessels fish the waters off Alaska, catcher-processor technology is found in nearly all the offshore fisheries of the United States.

Consumer demand for fish products continues to grow, and in open access fisheries there are no resource costs paid by the fishermen. In order to compete, individual fishermen must invest heavily in their vessels and gear to maximize the catch they can take before others beat them to it. As stocks decline, this powerful incentive increases. If an individual were to sacrifice near-term profit in an effort to improve the stocks, he would not receive a future reward because someone else would catch the fish. Conversely, if the fishermen operated in fisheries in which property rights were established, near-term sacrifice could be rewarded with future benefits, and there would be a much more efficient use of capital. As an example, the Atlantic surf clam and ocean quahog fishery now operates under an individual transferable fishing quota (ITQ) system and there is already evidence that the fleet is becoming more economically efficient and smaller as owners move to a year-round full-time fishing system.

Harvesting efficiency has improved, but there has been little incentive to use efficient and selective gears to minimize bycatch. This also is an open access fishery problem; harvest rates translate into profit and the ability to fish cleanly is not necessarily cost effective in open access fisheries. The National Marine Fisheries Service (NMFS) is working on gear development projects in an effort to reduce bycatch, and Regional Fishery Management Councils and NMFS are requiring vessels in some fisheries to carry domestic fishing observers to monitor bycatch rates in an effort to document the extent of the problem. Bycatch limits are commonly set in fishery management plans, since one fisherman's bycatch is usually another's target species.

In summary, many fisheries of the United States are overcapitalized at this time. They are effective in their harvesting efficiency, but they are neither efficient in their use of capital, nor selective in their harvests. Both problems can be attributed to the open access nature of domestic fisheries.

QUESTION:

What do you believe should be done to rebuild stocks and manage fisheries in a way that maintains fisheries for future generations?

ANSWER:

The National Marine Fisheries Service (NMFS) has already taken the major step necessary to prevent overfishing and rebuild stocks. On July 24, 1989, NMFS published revised Guidelines to National Standard 1 (prevent overfishing) which requires that each existing and future FMP specify, to the maximum extent possible, an objective and measurable definition of overfishing for each managed stock or stock complex, with an analysis of how the definition was determined and how it relates to biological potential. This change was instituted to prevent the Fishery Management Councils (Councils) from making management decisions based primarily on short-term economic and political considerations, rather than emphasizing the long-term viability of the fishery resource or the fishing industry. The short-term effect of the new requirement will be that more restrictive regulations will be necessary in those fisheries where stocks are approaching or have reached an overfished condition. The intended long-term effect is to assure that the reproductive capacity of any managed stock is not jeopardized, that depleted stocks are rebuilt, and that economically viable future harvest on a continuing basis are possible. To date, overfishing definitions have been approved for 23 of the 32 stocks/stock complexes under management, and several others are currently under review.

To ensure that overfished stocks are rebuilt, the guidelines also require that if data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary. Furthermore, unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality regardless of the cause of the low population level.

Excessive fishing effort has often been a root cause of high fishing mortality and reduced stocks. To facilitate a reduction in fishing effort where necessary, the NMFS has embarked on an effort to develop guidance and a strategy to encourage the implementation of limited access programs in the fisheries (under the Magnuson Act such programs can only be implemented with the approval of the appropriate Council, except for Atlantic highly migratory species). The NMFS, for example, is developing policy guidance on fishing effort limitation which states that "to achieve the NMFS goals of preventing overfishing, rebuilding depleted stocks, and promoting long-term stability in the fisheries, it is the policy of the NMFS to foster the efficient harvesting of the allowable biological catch. To carry out this policy, NMFS will promote management programs that allow entry into and exit from a fishery in a manner such that free market forces effect a balance between the fishing effort and the allowable biological catch". In addition, other NMFS activities include the preparation of a National controlled access strategy implementation plan by September 1, 1991. Support activities to implement limited access programs include a joint Sea Grant/NMFS workshop on controlled access systems research and impact data needs (summer, 1991), preparation of social impact assessment guidance for Councils and NMFS regions for use in assessing limited access alternatives, and provide support to Councils and NMFS regions in planning access controls when requested.

WILDLIFE PROTECTION AND TRADE NEGOTIATIONS

QUESTION:

The Marine Mammal Protection Act (MMPA) requires that nations exporting tuna products to the United States have dolphin protection programs comparable to our own. In recent years, this requirement has resulted in substantial reductions in dolphin kill rates of Latin American tuna boats, particularly Mexican vessels. Now, however, I am told that the Mexicans have initiated a GATT challenge to both the MMPA requirements and the Tuna Labeling Bill we enacted last fall. I also understand that the United States has agreed to the establishment of a three-member panel under the General Agreement on Tariffs and Trade (GATT) to look at the issue.

What is the status of the Mexican challenge?

ANSWER:

The Mexican challenge was taken up in oral argument before the GATT Panel on May 14, 1991. The Panel is scheduled to hear follow-up arguments in June and to deliver its report in mid-September.

QUESTION:

Would you agree that Americans should expect that products from foreign Nations meet the same environmental and safety standards as those products produced in the United States? Why or why not?

ANSWER:

Yes, Americans should expect that products imported from foreign nations meet the same standards, including environmental and safety standards, as those products produced in the United States. This is consistent with the principle in the GATT (General Agreement on Tariffs and Trade) and the Agreement on Technical Barriers to Trade (Standards Code) that imported products are to be treated no less favorably than domestic products. The Standards Code, which was negotiated under the auspices of the GATT, also provides that standards (mandatory product characteristics) are not to be prepared, adopted or applied with a view to creating obstacles to international trade, nor are they to have the effect of creating unnecessary obstacles to trade. In addition, in the current negotiations on agriculture under the Uruguay Round, the United States is attempting to ensure that sanitary and phytosanitary standards are based on sound science in order to further guarantee that standards not be disguised trade barriers or create unnecessary obstacles to trade.

QUESTION:

What are the implications for the conservation of marine mammals and other protected species such as sea turtles if the Mexican challenge is successful?

ANSWER:

Of course, the United States feels that the measures at issue in the dispute with Mexico are consistent with the United States' obligations under the GATT, particularly in light of the exceptions in GATT Article XX. However, if the GATT were to find that these measures are inconsistent with the United States' obligations under the GATT, the United States will be obligated to conform to the GATT or face possible trade retaliation from Mexico. This could mean finding a different way to achieve the same conservation goals that would be consistent with the GATT. It is not possible to speculate as to what effect, if any, an adverse finding in the current dispute with Mexico will have on the conservation of protected species until the actual panel report is completed and we have the exact basis for any such adverse ruling. It should be noted that the only measures before the GATT panel are those under the MMPA (Marine Mammal Protection Act) and the Dolphin Protection Consumer Information Act. It is too early to know whether that panel report, if it were adverse to the United States, would have any implications for measures under other laws, such as for sea turtles.

QUESTIONS SUBMITTED BY SENATOR ROBERT C. BYRD

WEATHER STATION CLOSURE

QUESTION:

Last year, at my request, the Committee again included language in the report accompanying the FY 1991 Commerce, Justice, State Appropriation bill, directing that the West Virginia's weather stations remain at current operating levels. Please provide, for the record, a table showing the location, staffing, funding, and hours of operation of the Weather Service offices in West Virginia for FY 1992 and FY 1993, as well as projected data for 1994.

ANSWER:

The NWS currently has four offices in the state of West Virginia. Each station operates twenty-four hours daily except for the Elkins station which operates sixteen hours per day. Current operations and future plans are as follows:

		Operating Level (Dollars in Thousands)		
Location	Staff	FY 1992	FY 1993	FY 1994
Charleston	25	1,482	1,482	1,482
Beckley	7	375	375	375
Elkins	4	204	204	204
Huntington	8	411	411	411

QUESTION:

May I have your assurances that the Weather Service Stations in West Virginia will be maintained at current operating levels through FY 1994 and subsequent budget years?

ANSWER:

Beckley, Huntington, and Charleston operate 24 hours daily while Elkins operates 16 hours daily. These levels will be maintained until early 1992 when the modernization will begin at these offices.

In the future, the National Weather Service will be in transition to a modernized field service. The offices at Elkins, Beckley, and Huntington will be phased down, as described in the National Implementation Plan, as the modernized offices at Charleston, Washington, Pittsburgh, and Roanoke assume more responsibility for areas in West Virginia.

Public Law 100-685 imposes a certification requirement to ensure that operations are not degraded as a result of the transition and requires annual notification to Congress of all NWS modernization activities.

QUESTIONS SUBMITTED BY SENATOR DANIEL K. INOUYE

PACIFIC ISLAND NETWORK

QUESTION:

I understand that NOAA has helped develop a unique program called the Pacific Island Network (PIN) to help meet NOAA's mandate under the Compact of Free Association by providing technical assistance to the U.S. affiliated Pacific Islands on marine related problems in aquaculture, fisheries, coastal resource management, communications, and education. Please describe how the PIN program works. Where does the Pacific Island Network get the resources to do this work? What level of resources would be necessary to continue the Pacific Island Network and to implement this program on all U.S.-affiliated Pacific islands?

ANSWER:

The Pacific Island Network is a consortium of United States federal agencies working to coordinate and provide technical assistance on coastal and marine problems to the U.S. affiliated island governments of the Commonwealth of the Northern Marianas Islands (CNMI), the Federated States of Micronesia (FSM), the Republic of the Marshall Islands (RMI), the Republic of Belau, Guam and American Samoa. Its goal is to provide consistent access to high quality technical information and expertise related to all aspects of the oceans and coastal resource planning, management and development.

PIN has three components: the PIN Coordinating Committee, the Secretariat, and PIN On-island Representatives. The PIN Coordinating Committee is chaired by NOAA and includes representatives of U.S. federal agencies, U.S. affiliated Pacific Island Governments, and other interested organizations. (A list is attached) The PIN Secretariat is located at the University of Hawaii Sea Grant College Program. It coordinates administration, logistics and communication responsibilities for implementing PIN projects, requests for technical assistance, and information gathering. The PIN On-island

Representatives are trained marine resource specialists and will be located in each island group. PIN currently has agents (representatives) in four of the six island entities we service (Guam, American Samoa, the Commonwealth of the Northern Marianas Islands, and the Federated States of Micronesia). They are housed in the island government agency responsible for marine resource management. They are responsible for working with their host governments in identifying needed technical assistance programs and in seeking federal sources to meet these needs. As experts in their fields, they are available to provide technical assistance upon request throughout the Network.

PIN is, and will continue to be funded through NOAA base funds. Additional support is provided by the University of Hawaii Sea Grant Office, the Department of Interior Office of Territorial and International Affairs, technical assistance support from participating federal government agencies, and cost sharing by the island governments.

Pacific Island Network Membership

Island Governments

American Samoa
Commonwealth of the Northern Marianas Islands
Federated States of Micronesia
Guam
Republic of the Marshall Islands
Republic of Belau

United States Government Agencies

Department of Commerce
National Oceanic and Atmospheric Administration
    the Deputy Assistant Secretary for International Interests
    State Partnership Program
    National Marine Fisheries Service
    National Sea Grant College Program
    National Ocean Service
        Office of Ocean and Coastal Resource Management
    National Weather Service

U.S. Foreign and Commercial Service

U.S. Army Corps of Engineers

Department of Interior
    Office of Territorial and International Affairs
    National Park Service
    Fish and Wildlife Service

Department of Agriculture
    Forest Service
    Soil Conservation Service

Small Business Administration

Non-Governmental Organizations

Pacific Basin Development Council
Center for Tropical and Subtropical Aquaculture
Pacific Business Center, University of Hawaii
University of Guam Marine Laboratory
College of Micronesia
Community College of Micronesia
The Nature Conservancy

SEA GRANT

QUESTION:

Congress authorized NOAA to implement a Sea Grant strategic research plan. One of the efforts which grew out of this initiative was the Sea Grant Working Committee for the Development of Bio-Organic Chemistry and Pharmacology of Marine Resources. The Working Group recommended a national strategic research initiative to expand research and develop the human resources necessary for our nation to maintain leadership in the field of marine bio-organic chemistry and pharmacology.

The Working Group submitted its national strategic research initiative to NOAA in November 1990. What is the status of the proposal, and how does NOAA plan to respond to the proposal?

ANSWER:

The proposal has been reviewed and is being incorporated into our long-range strategy for Sea Grant involvement in the field of science.

RESTRICTIONS ON LONGLINE FISHERMAN

QUESTION:

Recently, the Secretary of Commerce issued proposed regulations for longline fishing vessels in the waters off the Hawaiian Island chain, to ensure adequate monitoring of conditions in the longline fishery by collecting data on catch and effort, and on interactions between the fishery and marine mammals and endangered species. Currently, emergency regulations are in place to accomplish these goals. What is NOAA doing to ensure the full and vigorous enforcement of these regulations? How many observers are available for assignment to longline vessels entering the protected area? What factors determine whether an observer will be assigned to a longline vessel?

ANSWER:

The emergency regulations requiring longline vessels to carry observers when so directed by NMFS were instituted in November 1990 in response to unconfirmed reports of interactions between the longline fishery and Hawaiian monk seals and other protected species. When convincing evidence of such interactions was presented in January 1991, the Western Pacific Fishery Management Council and NMFS concurred in the need for emergency action to prohibit longline fishing within 50 miles of the northwestern Hawaiian Islands (NWHI) and within a 100-mile wide corridor where these islands are more than 100 miles apart. This action closed an area 100 miles wide and 1,400 miles long to longline fishing in order to prevent interactions between longline vessels and monk seals. Regulations for this closure were filed with the Office of the Federal Register for immediate effectiveness on April 15, 1991. To facilitate enforcement of this closure, the regulations will require (once clearance is obtained from the Office of Management and Budget under the Paperwork Reduction Act) that vessel operators notify NMFS immediately before entering and leaving the protected species zone if they transit the area on the way to or from port or other fishing grounds. Also, NMFS has committed additional funds to carry out aerial surveillance on a spot basis to enforce the closure. On a related note, while the observer program for the longline fishery has been suspended, placements will continue on bottomfish fishing vessels in the NWHI. As was the case in the longline fishery observer program, vessel operators must notify NMFS in advance of a trip to the NWHI and must carry an observer when directed to do so by NMFS. The Southwest Region has two observers available for this program. It is anticipated that 30 percent of all trips will be monitored. Factors considered in placing observers include size of the vessel, the extent to which crew would be displaced if an observer is assigned, the likely length of the trip, and vessel safety.

HAWAIIAN SEA TURTLE RESEARCH

QUESTION:

The National Marine Fisheries Service (NMFS) recently informed that, without approving a final plan, NMFS is implementing portions of the Hawaiian Sea Turtles Recovery Plan. How much funding has NMFS allocated to Hawaiian Sea Turtle recovery actions in FY 1991? Which recovery actions will this fund in FY 1991? How much funding does NMFS propose to allocate the Hawaiian sea turtle recovery in FY 1992? Which recovery actions will this fund in FY 1992? How much of this funding will go toward Hawaiian sea turtle tumor research?

If NMFS is already implementing portions of the Hawaiian Sea Turtle Recovery Plan, what is the justification for delaying final approval for the plan, and for incorporating this plan into a broader Pacific Basin plan?

ANSWER:

NMFS funding for Hawaiian Sea Turtle recovery actions in fiscal year 1991 totaled $162,000. NMFS funding covers 2.5 FTE's to be directly involved in the following recovery activities: investigating the green turtle tumor problem; monitoring and taking census on sea turtle populations; identification of essential habitats; and promoting sea turtle conservation through Section 7 Endangered Species Act consultations with other Federal agencies. In addition NMFS personnel document the incidental take of turtles, maintain a sea turtle stranding network, evaluate research permitted under the ESA, provide information on sea turtles, and undertake educational activities. We have not yet determined the allocations for our FY 1992 recovery activities. However, the tasks identified in the Hawaiian Sea Turtle Work Plan (a copy of which will be forwarded shortly) address the top priority actions. These actions will be considered along with recovery actions in other regions. Requested funding for all top priority actions for Hawaiian sea turtles in FY 92 totals $244,000. In terms of recovery priorities this ranks as the top research priority, but we must also continue to gather basic information on the status of these stocks and their habitat requirements, so that recovery potential, and recovery criteria for these stocks can be developed. The incidence of Green turtle tumors (fibropapillomas) is an issue of international proportions affecting the recovery of green turtles. This program will require substantial support if we are to meet the objectives agreed upon by participants in the Fibropapilloma Workshop (a copy of the report of that workshop will be provided to your staff shortly).

NMFS has not yet approved this recovery plan because it is being revised and incorporated into a broader Pacific Basin Plan. The revised plan will provide a clearer discussion and justification for the measures needed to be taken by NMFS to recover these species. However NMFS is committed to the implementation of recovery efforts for Hawaiian sea turtles while this plan is being developed. The need for expanding the range of our recovery efforts is based on the widespread pelagic occurrence of these species (based on reports from our various at-sea research activities), and the need for coordinated research and management by all Pacific Basin countries and territories.

NATIONAL UNDERSEA RESEARCH PROGRAM

QUESTION:

I understand that NOAA proposed funding for the National Undersea Research Program (NURP) in Fiscal Year 1992 but the request was denied. How much did NOAA request for the NURP program in FY 1992? At what level of the budget process was NOAA's request for NURP funds denied?

ANSWER:

NOAA had requested the Department of Commerce for a NURP FY 1992 funding level of $7.0M. The Department denied this request.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

STUTTGART FISH FARM

QUESTION:

By now the construction of the new bench research laboratory at the Stuttgart Fish Farm is virtually completed. Once again, the President has requested elimination of funding for both operating costs and construction at Stuttgart. Now that this additional state-of-the-art facility is in place at Stuttgart, don't you believe that some level of funding is proper to sustain the laboratory and protect the taxpayer's investment?

ANSWER:

Given that NOAA's authority extends only to anadromous and marine species, Department of Commerce funding for the Stuttgart facility is inappropriate. While proper management and use of the facility is important, these issues should be addressed by Federal officials responsible for fresh water species and possibly by State economic development experts.

QUESTION:

There is some discussion of moving funding for Stuttgart from NOAA to the Fish and Wildlife Service in Interior. What is your opinion of that idea? Are there any practical advantages to having funding come from one source rather than another? Is it the Administration's position that Stuttgart ought to be fully funded if it is moved to the Fish and Wildlife Service budget?

ANSWER:

Moving this activity to the Fish and Wildlife Service is appropriate as they have legislative authority over fresh water fish species. At present, NOAA passes this funding through to the Fish and Wildlife Service and does not exercise oversight. Such a move would provide the advantage of combining both fiscal and managerial oversight. The level of funding, if any, that this activity might receive within the Fish and Wildlife budget would depend on budget priorities for the Department of the Interior.

EXXON VALDEZ OIL SPILL

QUESTION:

NOAA was extensively involved in the clean-up of Prince William Sound following the Exxon-Valdez oil spill. Are there any plans for NOAA personnel to be involved in the clean-up of the Persian Gulf? If so, who will bear the cost of that investment?

On the same theme, is NOAA doing any atmospheric monitoring of the skies over the Gulf in response to the massive oil fires in Kuwait? If so, what costs are associated with that monitoring?

ANSWER:

NOAA's HAZMAT program and National Weather Service continue to support the President's U.S. Assistance Team to Saudi Arabia in response to the Gulf oil spills. Activities include: Aerial reconnaissance, spill movement predictions, weather forecasts and ecological assessments. This information is provided to all interested US agencies, the government of Saudi Arabia and ARAMCO at least once a day. In addition, HAZMAT has provided two people in Saudi Arabia on the Assistance Team beginning in January, 1991. People are being cycled to the Middle East on 30 day details.

With the end of the war, effort has been made to streamline HAZMAT's activities on the Gulf spills. Only one person is now on the Assistance Team and, after extensive verification and testing, the daily oil spill trajectory outputs have been transferred to King Fahd University. HAZMAT has been contacted by the Saudi government and asked to extend their weather forecasts for the region at least another two to three months. The work NOAA has underway is done at the request of the Coast Guard, which is responsible for its costs.

King Fahd University has written a proposal for an Arabian Gulf Oil Spill Research Program with NOAA. In response to this proposal, NOAA's Chief Scientist, Dr. Sylvia Earle, is mobilizing an interagency task force to meet with the Saudis in early May. The team will identify the potential for U.S. participation in this program. Task members will include representatives from NOAA, FDA, USF&WS and perhaps EPA.

Kuwaiti Oil Fires

At the request of the U.S. Ambassador to Saudi Arabia, on March 10, 1991, EPA and NOAA experts were deployed to the Arabian Gulf as part of an Interagency Air Assessment Team to evaluate the potential risks related to the Kuwaiti oil fires. The U.S. has focused on health assessment and air quality monitoring/forecasting. NOAA is part of both the team on site and the interagency planning effort located at EPA's Emergency Operations Center located in Washington, D.C. NOAA's HAZMAT team, Air Resources Laboratory and National Weather Service are working on this issue. NOAA will redirect those resources to fund its limited involvement in the activities in Kuwait.

QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

PLASTIC POLLUTION

QUESTION:

What is NOAA proposing to do on the problem of plastic pollution in the oceans in FY 1992 and how much will NOAA spend?

ANSWER:

In Fiscal Year 1992, NOAA expects to spend $700K on projects directly addressing the plastic pollution in the oceans. Within the National Marine Fisheries Service (NMFS), the Marine Entanglement Research Program (MERP) plans and these projects on an annual basis.

In FY 1992 NOAA will continue to conduct education, research, monitoring and mitigation actions in response to the Marine Plastic Pollution Research and Control Act of 1987, the 1988 Report of the Interagency Task Force on Persistent Marine Debris, the advice of the Marine Debris Roundtable and the guidance of an internal advisory committee. NOAA expects to continue its highly successful Marine Debris Information Offices. These offices respond to thousands of public and industry request for information on plastic pollution and its solutions (12,935 in FY 1990). The demand for this type of information has doubled in the last year and is expected to double again in he next two years.

NOAA's marine debris activities include a series of monitoring programs to detect the effects of the implementation of MARPOL Annex V. These are long-term surveys including:

1. Quarterly systematic beach surveys in eight National Seashores around the nation, in cooperation with the National Park Service.

2. Support with the EPA for the National Beach Cleanups in association with Coastweeks in the Fall each year;

3. Surveys of index sites in Alaska to monitor entangling debris and continue developing field methods for debris measurement.

4. Compilation of a manual of international standards for the survey of persistent marine debris for adoption by the Intergovernmental Oceanographic Commission for world-wide use.

In FY 1992, NOAA expects to join with EPA, MARAD, Coast Guard, Navy and others in funding a national evaluation of the implementation of MARPOL Annex V by the Marine Board of the National Research Council. This work is consistent with NOAA's continuing efforts to improve the practical implementation of the MARPOL requirements. NOAA will also continue in FY 1992 working with the Coast Guard and the International Maritime Organization to revise and improve the IMO "Guidelines for the Implementation of Annex V of MARPOL 73/78".

Research related to plastic pollution of the oceans in FY 1992 will include the completion of two studies of the economic aspects of marine debris. NOAA will continue to monitor, research and protect from marine debris where possible, marine species that are endangered, threatened or depleted. Work continues to protect the highly endangered Hawaiian monk seal, to evaluate the role of debris in the survival of sea turtles (all are protected under the ESA) and to monitor the rates of entanglement of northern fur seals in Alaska.

In FY 1992, NOAA will continue to evaluate the problems and potential solutions to ghost fishing by lost and discarded fishing gear.

QUESTION:

Does NOAA receive or have access to the Coast Guard's compliance reports? If so, has NOAA evaluated these reports and do existing efforts seem adequate? Is additional regulatory action needed?

ANSWER:

NOAA received the first Coast Guard compliance report prepared under the Marine Plastic Pollution Research and Control Act of 1987 in March 1990. The report was prepared before significant compliance-related information and experience was available. The Coast Guard's second report on compliance with the regulations promulgated under the MPPRCA is being prepared at this time. When it is released, NOAA will evaluate the need for additional regulatory action.

QUESTION:

The report recommended that Fishery Management Plans include provisions relating to the disposal of gear and escape panels in traps and pots.

(A) Is NOAA addressing the plastics problem through the Fishery Management Plan process? Please explain NOAA's efforts to reduce plastics generated from fishing operations and how those efforts would address the general problem of plastics in the marine environment.

(B) Are there adequate reception facilities available to handle the problem of waste from fishing vessels?

ANSWER:

(A) Yes, NOAA is addressing the plastic pollution problem through the Fishery Management Plan (FMP) process. If the FMP utilizes pots or traps as the capture gear there are requirements for incorporating a section or part of the equipment that will bio-degrade. This is to prevent "ghost fishing" should the gear be lost. There are no similar requirements on fishing nets or trawls with the exception of TEDs required on shrimp trawls.

The Magnuson Act requires that FMP's take into consideration possible environmental effects of elements of the plan. But all plans have not incorporated elements to deal with lost plastic gear or parts of netting.

Since 1985 NMFS has conducted a Marine Entanglement Research Program (MERP) operated from the Alaska Fisheries Science Center in Seattle Washington. The program maintains two Marine Debris Information Offices, one on the west coast (San Francisco) and the other on the east coast (Washington D.C.) these offices distribute to the general public and interested industry members a wide range of educational and instructional materials both printed and audio-visual. In addition the program works with the Coast Guard, EPA, IMO and, provides mitigation services, surveys port reception facilities (for plastic waste) and lets contracts for research on the effects of marine debris. Annual budget of this program is about $700,000.

(B) There are not enough port reception facilities in the U.S. The situation is slowly improving. MERP has advised and administered five projects at ports around the country aimed at developing prototype port reception facilities.

QUESTION:

What efforts are being made to develop degradable fishing gear?

ANSWER:

NOAA has not devoted any currently available research funds to develop degradable plastic fishing gear. However for many years state and federal fishing regulations have stipulated the use of untreated cotton and linen twine as well as light weight chicken wire in gear construction because they will degrade in a relatively short time if lost. The Japanese and some U.S. interests have experimented with using degradable fastenings between float lines and driftnet panels which, over time, would release and collapse the net on the ocean bottom. MERP is currently tracking the development of new biodegradable plastic products for potential application in fishing gear construction.

QUESTION:

What efforts are being made to help fishermen recycle their used fishing gear? Are you conducting any analyses to show whether such recycling is feasible?

ANSWER:

Considerable educational effort has been directed at fishermen to encourage the recycling of used fishing gear. The results from two west coast port reception facility projects indicate that the problem is complex. NMFS developed mechanisms to receive, repackage and transport used fishing gear to recycling centers but effective recycling of fishing gear will occur only to the extent that markets exist for recycled component polymers. This situation will improve as general plastics recycling expands in the U.S. The MERP is tracking related efforts and assisting where feasible, administrating and reviewing grants and providing information.

COASTAL ZONE MANAGEMENT

QUESTION:

If the President's budget request for the Coastal Zone Management Act is enacted, how will the decrease affect New Jersey's coastal zone management program?

ANSWER:

Funding for the New Jersey Coastal Management Program totaled $2,014,000 in FY 1991. The President's budget request for FY 1992 would result in a $745,000 decrease for the New Jersey program. One of the primary uses of the Federal coastal management funds in the State is to support positions within the Department of Environmental Protection which deal with enforcement of the core Coastal Zone Management Program.

While state funds under section 306 will be reduced under the President's budget, $4.7 million will be available under section 308, the Coastal Zone Management Fund. These monies will be available for demonstration projects and other purposes as described in the section. It is possible that New Jersey could receive a portion of these funds.

QUESTION:

Sections 6201-6217 of the Omnibus Budget Reconciliation Act of 1990 contained amendments to the Coastal Zone Management Act. Section 6208 amended the consistency provisions to overturn the Supreme Court decision concerning OCS lease sales. What is the status of your efforts to revise your consistency regulations to implement these new requirements?

ANSWER:

The amendments to section 307 of the Coastal Zone Management Act, the Federal consistency provisions, now require that Outer Continental Shelf (OCS) lease sales be subject to Federal consistency. In consultation with the Mineral Management Service (MMS) of the Department of the Interior, NOAA officials have confirmed that MMS is already in the process of implementing revised leasing procedures in Alaska and the Gulf of Mexico to reflect this legislative change. The process seems to be working well.

The overturning of the Supreme Court decision is the principle substantive change to section 307. NOAA believes that other than the effect on OCS lease sales, the language of the section now codifies what had been NOAA's interpretation of the section and what already exists in the implementing regulations. In view of the above consideration, we do not believe that changes to the regulations are necessary at this time. We will be monitoring the implementation of these provisions, and will evaluate the need for regulatory changes in the future, if the need arises.

QUESTION:

Section 6217 established a new program to protect coastal waters. How much does the budget provide to implement this program? What activities will you conduct in FY 1992 to carry out the requirements of this section? What efforts will you make to address non-point source pollution under this program?

ANSWER:

NOAA will rely on existing program management funds at the NOAA level to support the development of guidance and regulations pursuant to this section. In May 1991, the Environmental Protection Agency will be publishing draft guidance on management measures, as required under that section. Final guidance on management measures will be published in May 1992. During the next year, NOAA will be working to develop guidance on state implementation of the Coastal Non-point Pollution Control Program. This guidance will be published in May 1992, and the corresponding regulations in May 1993. The states have until September 1995 to develop an approvable program in accord with these regulations.

OCEAN DUMPING

QUESTION:

Under the Ocean Dumping Ban Act, NOAA will receive funds from sludge dumpers to carry out its responsibilities. What funding does NOAA expect to receive and what does NOAA plan to do with these funds?

ANSWER:

Fees paid by ocean dumpers were first received by NOAA from the Environmental Protection Agency (EPA) in FY 1990. The fees received are to be used specifically for monitoring, research, and related activities. The amounts received to date, by quarter, are:

Date	Amount	Date	Amount
FY 90		FY 91	
11/01/89*	259.8K	11/01/90	451.4K
02/01/90	402.7K	02/01/91	481.8K
05/01/90 Projected	423.9K	05/01/91	410.0K
08/01/90 Projected	451.4K	08/01/91	196.7K

* The first quarter fees were actually received in February 1990.

Upon receipt of initial funds, NOAA began implementing its parts of the monitoring and research plan that was developed earlier and jointly with the EPA.

Monitoring and research activities undertaken in FY 1990 continue into FY 1991. They relate to comparisons of environmental and biological conditions in and around the 106-Mile Dump Site with those farther removed from the Site:

- Chemical contaminants (trace metals and organics) in midwater fishes;
- Chemical contaminants (trace metals and organics) in benthic macrofauna (bottom fishes and invertebrates);
- Chemical contaminants (trace metals and organics) in sediments; and

- Shell disease (chitinoclasia) prevalence in lobsters.

Findings from these activities will be interpreted in the context of results from physical oceanography studies, in and around the 106-Mile Site and farther removed from the Site, that NOAA is conducting in the same time frame:

- Horizontal circulation patterns (and associated movement of dumped materials while they are falling toward the bottom) of sub-surface, near-surface, and sub-surface waters;
- Vertical structure of the water column (that influences the rate at which dumped particles fall toward the bottom); and
- Application of a three-dimensional, computer-based circulation model (that uses findings from the horizontal and vertical studies) to the overall transport of dumped materials.

Analysis and interpretation of NOAA's study results and EPA's study results will be conducted in a close and cooperative fashion -- in accordance with the joint EPA/NOAA plan for monitoring and research. NOAA activities and initial findings are being summarized in a report now in preparation: "1990 NOAA Research and Monitoring Activities Related to the 106-Mile Ocean Waste Dump Site as Called for under the Ocean Dumping Ban Act of 1988." Materials contained in a draft of this report have been provided to EPA for inclusion in the Annual Report to Congress.

COASTAL AMERICA

QUESTION:

Can you identify any projects NOAA will conduct under the Coastal America initiative?

ANSWER:

Coastal America is an interagency initiative, proposed by the four Federal agencies with management, stewardship, and regulatory responsibility for living coastal resources. Because NOAA is only one partner with EPA, the Department of Interior, and the Corps of Engineers, there will not be any NOAA projects, per se, rather Coastal America projects, which will involve at least several Coastal America participants. For FY 1992, the agencies currently are working with regional Federal representatives, and ultimately with the coastal states, to identify and propose high priority projects.

PUMP OUT STATIONS

QUESTION:

Are there adequate pump out stations at marinas and ports across the U.S. to handle sewage from vessels?

ANSWER:

NOAA has no information on this topic. Suggest question be redirected to the U.S. Coast Guard and the U.S. Environmental Protection Agency.

QUESTION:

What is the basis for your conclusion?

ANSWER:

NOAA has no information on this topic. Suggest question be redirected to the U.S. Coast Guard and the U.S. Environmental Protection Agency.

QUESTION:

If there aren't adequate facilities, what impact will this have on coastal waters?

ANSWER:

NOAA has no information on this topic. Suggest question be redirected to the U.S. Coast Guard and the U.S. Environmental Protection Agency.

BEACH TESTING

QUESTION:

How much does your budget provide for work to develop more accurate indicators of short-term pollution than fecal coliform? What sorts of indicators are you working on?

ANSWER:

There are no studies presently underway by NOAA to work on the development of more accurate indicators of short-term pollution than fecal coliforms.

QUESTION:

Do existing EPA water quality standards and monitoring procedures protect bathers from short-term increases in pollution occurring as a result of storm events?

ANSWER:

NOAA has no information on this topic. Suggest question be redirected to the U.S. Environmental Protection Agency.

QUESTION:

Do you have any evidence of the number of people who become sick from bathing in coastal waters?

ANSWER:

NOAA has no information on this topic. Suggest question be redirected to the Environmental Protection Agency.

COMBINED SEWER OVERFLOWS

QUESTION:

What information do you have about the effect that combined sewer overflows are having on coastal waters in general and waters in the New York Bight?

ANSWER:

For the past ten years, NOAA has maintained a program, the National Coastal Pollutant Discharge Inventory (NCPDI) Program, to estimate pollutant discharges in coastal areas. As part of the NCPDI, seasonal and annual estimates are made for 16 pollutants for discharges from combined sewer overflows for a base year of 1982. While no information is available in the NCPDI on the effects of pollutants discharged from combined sewers, it is possible to use the information in the inventory to determine the relative contribution of combined sewer discharges compared to discharges for other major pollutant sources.

Based on information in the NCPDI, combined sewer discharges are an important source of pollutant loadings in several major Northeast urban areas such as Boston, New York, and Philadelphia.

QUESTION:

How much money do you plan to spend in Fy 1992 on the effect of combined sewer overflows on coastal waters?

ANSWER:

NOAA does not measure directly the chemical and biological effects of combined sewer overflows on coastal environmental quality. NOAA's National Status and Trends Program monitors environmental quality of coastal waters but can not discriminate effects due to combined sewer overflows from those due to other pollutant input sources.

MID ATLANTIC ENVIRONMENT

QUESTION:

What are the major pollution sources in the New York Bight area?

ANSWER:

NOAA's National Status and Trends Program includes a continuing environmental monitoring program to measure the levels of about 70 different contaminants in fish, mussels, and sediments from around the coasts of the United States. This program includes a number of sampling sites along the shores of the New York Bight.

Our results show that most contaminants in the Hudson-Raritan Estuary are found at levels that are substantially above the levels usually found elsewhere. In fact, for a number of contaminants, the concentration levels in this estuary are among the highest found anywhere in the U.S. by the National Status and Trends Program.

The concentrations of these same contaminants are found at much lower levels along the open coasts of Long Island and New Jersey. From these NOAA results, and those of other workers, it seems clear that the major sources of pollution to the Bight are, in general, associated with the New York Metropolitan Area. They include municipal and industrial direct shore-line discharges, the overflow from combined sewer outfalls, general surface runoff associated with the human activities concentrated in this region, as well as contributions collected by the Hudson River within its drainage basin.

QUESTION:

How would you compare the environmental sensitivity of the Mid-Atlantic with other areas of the country?

ANSWER:

The shores of the Mid-Atlantic region have a number of areas of high environmental sensitivity. Especially sensitive are estuarine and wetland areas of high ecological importance because of their utilization as spawning and nursery areas by many different fish and invertebrate species and as vital nesting and feeding areas for concentrations of shorebirds, raptors, and other birds. Most other shoreline regions around the U.S. have similarly sensitive areas. However, in one sense the Mid-Atlantic area can be considered more vulnerable to environmental impacts than most other areas of the country because of its greater concentration of humans and human activities than most other regions. This has led to more impact on the sensitive areas in this region than is generally true elsewhere.

The remaining, more pristine areas have become significant as remnants of previously wide-spread ecosystem types, and therefore candidates for state preserves and national marine sanctuaries. For example, migrating shorebirds that pause in feeding areas along their migration route have fewer and fewer suitable areas for these stopovers in the Mid-Atlantic region. The remaining areas become increasingly critical for support of such populations.

SEA GRANT

QUESTION:

What impact will the proposed budget cut for Sea Grant have for New Jersey's Sea Grant program?

ANSWER:

New Jersey's Sea Grant research program will be able to compete for funding at about the same level as last year. Federal funding for advisory, education, and program development grants will be terminated.

NATIONAL UNDERSEA RESEARCH PROGRAM

QUESTION:

No funding is requested for the NOAA Undersea Research Program in FY 1992. What impact will the proposed budget have on the undersea program at Rutgers University?

ANSWER:

Rutgers University is not an undersea research program, but a collection of projects by individual investigators. Proposals received from this group and considered for funding by NURP using the standard peer review process were one year tasks. That time period is consonant with the one-year ear marked appropriations.

QUESTION:

What efforts is NOAA making to improve the distribution of funding for the undersea research program at Rutgers?

ANSWER:

The distribution of funding for undersea research at Rutgers University is governed by the same procedures which affects all other proposers. The first step is peer review, but this process cannot begin until a proposal is received. Peer review consumes time; if results are equivocal, even more time is consumed while additional reviewers are sought. After the review is completed, instruction is passed back to the prospective principal investigator. The principal investigator is responsible for presenting a final proposal complete with signed forms, certifications required by law, and an accurate budget reflecting the proposal's final program. The proposal at this stage is ready to process through NOAA and Department of Commerce channels. The time the proposal remains in the hands of the principal investigator and his/her institution is out of the control of NOAA. The speed with which the modified and resubmitted proposal moves through the final granting process depends upon how well and thoroughly that proposal meets the guidelines given.

GLOBAL WARMING

QUESTION:

NOAA proposes a significant increase in funding for a Climate and Global Program in support of the U.S. Global Change Research Program.

Will any of this funding go to the Geophysical Fluid Dynamic Laboratory in Princeton, New Jersey?

ANSWER:

The Geophysical Dynamics Laboratory (GFDL) has a very important role to play in understanding and predicting climate and global change. In FY 1990 and 1991, GFDL received approximately 4% of NOAA's climate and global change funds ($762,000 and $1,989,000, respectively). The money went for research in the areas of atmospheric chemistry, climate diagnostics, general circulation and ocean modeling, dynamic extended range forecasting, and climate data assimilation systems. In FY 1992, NOAA will initiate the development of several Earth-systems modeling centers. We expect that GFDL and its cooperative program with Princeton University will play a leading role in this effort. Given GFDL's unique role in NOAA's Climate and Global Change Program, one can expect that it will continue to receive an appropriate portion of NOAA's future funds for this program. Specific FY 1992 allocations for GFDL will be determined once the President has signed the FY 1992 appropriations bill.

QUESTION:

What is the status of the computer enhancement at GFDL?

ANSWER:

Installation and acceptance of the Cray Y-MP system at GFDL was completed on June 14, 1990. The conversion of most of the major GFDL models was accomplished by this time, thereby permitting GFDL scientists to transfer a substantial portion of their computational workload to the new system immediately. Within the next three months, the Laboratory moved all of its workload over to the new system and is now achieving the ten-fold increase in computational power that was anticipated. The procurement of this system is producing unprecedented advancements in the scientific modeling capabilities of the Laboratory in climate and weather.

RIGHT WHALE RESEARCH

QUESTION:

What is the status of NOAA's Atlantic Coast right whale research program?

ANSWER:

During the five year period (FY 1986 - FY 1991) a variety of research activities will have been conducted. The information gained has given us a better understanding of the whales' distribution and habitat requirements. These activities include: 1) organizing all previous sighting information into a master database so that individual animals can be identified and their distribution better understood and providing this database to researchers upon request; 2) conducting additional sighting surveys to expand our knowledge of distribution and habitat requirements including the critical role of the Bay of Fundy and Browns Bank both of which are in Canadian waters; and, 3) clarifying the micro-habitat requirements in terms of zooplankton patch densities. Unfortunately the research has not yet been able to locate the whales' major wintering grounds along the Eastern seaboard.

QUESTION:

What has NOAA learned about the right whale from this program?

ANSWER:

We know that mortality from ship collisions is the major direct human impact affecting the recovery of the northern right whale. Entanglement in fishing gear also impacts the species, but it is not known to what degree.

QUESTION:

Why is NOAA proposing to eliminate the program?

ANSWER:

By the end of FY 1991 NMFS will have an approved Recovery Plan for the Northern Right Whale which will identify information and management needs necessary for the recovery of the species. At that time NMFS will evaluate the available information and decide on future research and recovery needs based on the priorities identified in the recovery plan.

QUESTION:

What is the population of the Atlantic right whale stock?

ANSWER:

The population of the northern right whale in the western North Atlantic is estimated to be 300-350 individuals.

QUESTION:

Does NOAA have any other programs which specifically address Atlantic right whales?

ANSWER:

Impacts to northern right whales are addressed during the consultation process under Section 7 of the Endangered Species Act. Section 7 consultations must be conducted for all Federal activities which may affect a listed species.

STATE FISHERY GRANTS

QUESTION:

What effect will the cuts in fishery grants to states have on grants to New Jersey?

ANSWER:

In FY 1991 New Jersey received a total of $127,697 under the Interjurisdictional Fisheries Act. This was used for marine law enforcement, for support of marine fish management through research and collection of catch and effort statistics, and for surf clam research. New Jersey also received a total of $20,000 under the provisions of Title 7 of the Anadromous Fish Conservation Act. This was used to support a tag, release and recovery program on the coastal stocks of striped bass.

FISHING GEAR RESEARCH

QUESTION:

Research has succeeded in improving the selectivity of fish catches and reduced waste in the shrimp (turtle excluder devices) and lobster (escape hatches) fisheries. Expanding these efforts to the longline and otter trawl fisheries could improve the value of fisherman's catches and reduce waste of our marine resources.

Under your FY 1992 budget, will you fund any work to reduce unwanted fish catches in the longline and otter trawl fisheries?

ANSWER:

In FY 1992 NMFS will concentrate its conservation engineering efforts on reducing the bycatch of fish in shrimp trawls.

LANDSAT

QUESTION:

What plans does NOAA have for continuing land remote sensing beyond Landsat 6?

ANSWER:

The Administration is committed to maintaining the continuity of Landsat-type data after Landsat 6. The Administration is considering options to meet this commitment. To date, no decision has been made.

QUESTION:

If funds for Landsat 7 were provided by other agencies, would NOAA be interested in being the acquisition agency?

ANSWER:

The appropriate role for Commerce in the future of the Landsat system will be a component of the Administration's upcoming decision.

NEW JERSEY IMPACT

QUESTION:

What effect will the proposed changes in your budget have on NOAA facilities in New Jersey?

ANSWER:

NOAA's proposed FY 1992 budget will have a positive effect upon New Jersey. Overall, increases exists in both the program and facilities aspects of NOAA. Program changes are restricted to the elimination of NOAA's Undersea Research Program ($4,530,000) and the increase of the Polar Spacecraft and Launching ($23,873,000). NOAA's net increase in the program aspects is therefore $19,343,000.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

ANTARCTIC MARINE LIVING RESOURCES

QUESTION:

In 1984 the Congress passed the Antarctic Marine Living Resources Convention Act of 1984. It was designed to implement the Convention for the Conservation of Antarctic Marine Living Resources. However, the Administration has never asked for funding to support the research necessary to implement the Convention in a meaningful way.

For the past five years the subcommittee has provided resources to NOAA to perform research in the Antarctic. For fiscal year 1991 this amounted to $1.3 million. Once again the Administration is requesting no funding for fiscal year 1992.

Since the United States would not be in a position to provide its share of the research funding next year, and thus will be in no position to make policy recommendations on fishing and harvest levels, why should we continue to participate in the convention? Based on the NOAA budget, shouldn't we just withdraw?

ANSWER:

Active membership in Conservation of Antarctic Living Marine Resources (CCAMLR) provides an appropriate vehicle for assisting U.S. fishermen operating in those waters. The United States was a major participant in negotiating the convention and its unique premise of ecosystem management as a conservation goal. The U.S. delegation has provided definitive leadership in the Convention's evolution of Conservation Measures, establishment of an international system of observation and inspection and the basis for establishing a cap on the catch of krill. United States withdrawal from this Convention would send a particularly disturbing signal during this time of complex negotiations on the Antarctic Treaty and United States intentions to participate in the international governance of the continent.

NOAA FLEET MAINTENANCE

QUESTION:

Service life extension overhauls are common in the Navy in order to extend the operating life of a ship by up to 15 years. Why were no service life extensions performed on NOAA vessels? Hasn't the lack of such major maintenance significantly curtailed the useful life of the fleet?

ANSWER:

NOAA made a policy decision in the past to use its resources to fund days at sea rather than service life extensions. NOAA also diverted funds appropriated for fleet maintenance to other purposes. These decisions have had some effect on the service life of some NOAA ships. However, most are good candidates to provide many years of additional service.

QUESTION:

Does NOAA need a fleet to meet its mission?

ANSWER:

NOAA's missions focus upon three major activities: mapping and charting, assessment of living marine resources, and oceanographic research and monitoring. Each of these have unique requirements, and can only be accomplished on ships that have the unique capability to meet these requirements. No technology is currently available that would allow NOAA to collect data to satisfy the requirements of these missions without ships. Even with the recent advancements in remote sensing and with future developments such as the Earth Observing Satellite, ships will continue to be required to conduct research and survey missions.

QUESTION:

What plans does NOAA have for the future of the fleet? What would be the cost of replacing the fleet?

ANSWER:

NOAA is currently evaluating possible future actions regarding the fleet. The cost of any fleet rehabilitation program will be a function of the days at sea to be provided and the mix of ships needed to provide these days at sea. No decision has been made at this point regarding these specific issues or the overall need for such a program.

QUESTIONS SUBMITTED BY SENATOR MARK O. HATFIELD

COLUMBIA RIVER HATCHERIES

QUESTION:

In an attempt to clarify where funding decisions have been made on Columbia River hatcheries and other programs important to Oregon, I have several questions regarding the FY 1992 budget proposal.

What was the request submitted by the National Marine Fisheries Service to NOAA for both the total NMFS budget and specifically the Columbia River hatcheries?

ANSWER:

The total NMFS request for FY 1992 as submitted to NOAA was $272,191,000 of which $9,300,000 was requested for the Columbia River hatcheries.

QUESTION:

What was the request submitted by NOAA to the Department of Commerce for both NOAA's entire budget, NMFS total budget, and specifically the Columbia River Hatcheries?

ANSWER:

The total NOAA request for FY 1992 as submitted to the Department of Commerce was $1,885,046,000 of which $226,171,000 was for NMFS and $2,000,000 was for the Columbia River hatcheries.

QUESTION:

What was the request submitted by the Department of Commerce to OMB for NOAA, NMFS, and Columbia River Hatcheries?

ANSWER:

The total NOAA request for FY 1992 as submitted to OMB was $1,666,889,000 of which $163,911,000 was for NMFS. No funds were included in the request to OMB for the Columbia River hatcheries

DRIFTNET ACT IMPLEMENTATION

QUESTION:

The President's budget proposal requests $3.278 million for Driftnet Act Implementation. What was the NMFS request for this program and are these funds sufficient?

ANSWER:

The $3,278,000 requested in the President's budget is sufficient to carry out work essential for implementation of the Driftnet Act.

QUESTION:

The Coast Guard has indicated that they intend to locate two additional 378 foot high endurance cutters on the Pacific Ocean and in the Bering Sea to patrol for fishing violations. What coordinated efforts do you have with the Coast Guard regarding enforcement of driftnetting violations?

ANSWER:

The NMFS Office of Enforcement's Northwest Area coordinates enforcement efforts with the U.S. Coast Guard as well as with its Canadian and Soviet counterparts to provide daily coverage of high seas areas fished by driftnet vessels. Primary coverage is provided by the Coast Guard either from the surface or the air. Experienced NMFS Special Agents generally participate in these Coast Guard efforts. A pre-season planning meeting among NMFS, Coast Guard and Canadian enforcement authorities was held in early April to ensure the same high level of coverage for the 1991 driftnet season.

ENDANGERED SPECIES

QUESTION:

The NMFS budget proposal includes $1 million for Endangered Species act listing and status review. How and for what will these funds be administered?

ANSWER:

These funds will be used for conducting status reviews and making listing determinations for species on NMFS's candidate species list, studies and determinations with respect to listings of salmon runs in the Pacific Northwest, including designation of critical habitat, and developing and implementing cooperative agreements with the coastal States under section 6 of the Endangered Species Act to provide resources to involve the States in status reviews of candidate species.

QUESTION:

As you know, NMFS recently issued a proposed rule-making to list the Snake River sockeye for protection under the Endangered Species Act and it appears likely that additional rule-makings will be forthcoming on Snake River spring, summer, and fall chinook run and the lower Columbia coho run. For several months, I have been working with Northwest Governors, the Bonneville Power Administration, environmental groups, Indian tribes, and others in an attempt to develop a recovery plan for these salmon runs. These decision on protection under the Endangered Species Act will be made by NMFS in 1991 and 1992. I have several questions regarding this process and the role of the NOAA hatcheries on the Columbia River.

How would NMFS provide the technical expertise on this process if we were to accept the President's budget request for zero funds?

ANSWER:

NOAA will continue to provide technical expertise for this process by utilizing base funding as we have to date as well as the $1 million requested in the 1992 budget for this purpose.

The Endangered Species Act petitions on Columbia River salmon have highlighted a significant problem. Whether or not we list one or more stocks of salmon, clearly a number of salmon stocks are vulnerable to collapse. The needs and habitat requirements of wild runs of salmon should be considered in all decisions regarding use of the river. The Salmon Summit was an important first step at looking at the problems and possible solutions. Although no consensus was reached, the Summit has stimulated the development and analysis of innovative alternatives and has encouraged action by individual agencies. For example, Bonneville Power has made a commitment to funding and has taken steps to improve the water flow for the downstream migration of salmon. There is no single or simple way to restore salmon stocks; recovery programs must address a wide range of activities, including hydropower, irrigation, water storage, fishing, and hatchery management. Federal, state and tribal agencies and private interests must work together to find ways to conserve salmon with as little impact on other activities as possible. Creative solutions can only be developed if all of the entities are involved. Therefore, NMFS encourages the Summit to continue its efforts to evaluate options for enhancing wild salmon stocks and to seek agreement and cooperation of involved groups, and NMFS pledges to continue its advisory role to this effort. The goal of the Act is to conserve listed species in their natural habitats and to maintain biological diversity. In this regard, hatchery programs should be thoroughly evaluated. Although the impact of hatchery programs on wild runs is largely unknown, in some cases, hatchery production may be contributing to the decline of wild runs of salmon. Modifications to current hatchery practices may be needed to enhance the wild runs. Not all forms of artificial propagation are consistent with the Endangered Species Act; artificial propagation should be used as a conservation measure only if it will enhance the survival of the species in its natural ecosystem.

QUESTION:

In recent years, the federal government has spent millions of dollars on hatcheries. Many involved in the ESA process are contending the hatcheries are a disaster and are part of the problem rather than the solution. On the Snake River system, initial stock count indicate that for every 1,000 fish let out, we get 2.5 back. They are loaded with bacterial kidney disease and more than half of the fish die between the hatchery and the Lower Granite Dam. The hatchery fish interfere with the competitive food gathering ability of wild fish and are spreading disease to natural runs.

What is being done to address this problem, especially with disease control?

ANSWER:

While the Federal Government is spending millions on hatcheries, the Department of Commerce has not funded hatcheries in the Snake River Basin, the area of concern for the stocks of sockeye, spring chinook, fall chinook, and summer chinook that have been petitioned for listing under ESA. Federal funding in this area is provided by the U.S. Army Corps of Engineers and the Bonneville Power Administration. The Federal hatcheries in the Snake River Basin are operated by the U.S. Fish and Wildlife

Service. As far as lower Columbia coho salmon are concerned, while DOC funds are is being spent under the Columbia River Fisheries Development Program, the coho hatcheries have both a high return rate and benefit/cost ratio and fish released from these hatcheries constitute a major portion of the important sports, commercial, and tribal fisheries in the Region.

A return of 2.5 fish for every 1000 released, while it sounds low, is sufficient to provide brood stock for future generations. It should be pointed out that the goal for most hatcheries is not to get a large return but rather to have most of the fish either be harvested or, where the purpose of the hatchery plant is to establish or re-introduce fish to areas remote from the hatchery, return to the release site to spawn. Surplus returns to the hatchery could be considered wasted fish.

Bacterial kidney disease is a major concern. In the past, fish released from the hatcheries in the Snake River Basin have had high incidence of kidney disease. The U.S. Fish and Wildlife Service and the Idaho Department of Fish and Game have instituted an aggressive program of disease control and have been successful in making dramatic reductions in the level of disease in hatchery fish. There are still large losses between the hatcheries and the first dam but, since the level of disease at release has been reduced, the problem may be tied to the reduction in current flow in the reservoirs caused by the dams and the corresponding reduction in the speed at which the fish migrate downstream. Migrating fish that are delayed during their downstream movement are exposed to disease in the environment for a longer period of time than would be the case if the river were free flowing.

QUESTION:

As you know, salmon conservation issues will gain much prominence in FY 1992 (Snake River sockeye are proposed for endangered listing and other Northwest stocks are petitioned). Additional work needs to be done on the causes of population decline and on recovery plans.

How much is in the 1992 budget for these Endangered Species Act activities as compared with 1990 and 1991? We request that NMFS report back to the committee on additional funding and staffing needs for FY 1992.

ANSWER:

In FY 1990 NMFS redirected approximately $350,000 to begin the Northwest salmon status review process. In FY 1991, $300,000 was included in the NMFS budget to assist the involved States in work associated with Columbia River salmon petitions. In addition, NMFS redirected $900,000 to respond to the petitions. NMFS anticipates a similar level of base resources will be used in FY 1992 for processing petitions, compiling information, conducting public hearings, and completing status reviews and listing and critical habitat documents. An additional $1,000,000 is included in the FY 1992 budget request, of which $500,000 will be used to conduct various studies on salmon, including critical habitat, stock determination/differentiation, economic evaluations, and recovery requirements of listed stocks.

Finally, an increase of $1 million is requested to address general protected species population assessment research and listing reviews.

QUESTION:

What are you doing to tighten the management of NMFS' research program? What specific measures are you implementing to assure that the agency's science dollars are being spent to support the agency's management goals?

ANSWER:

Science program reviews are underway and have been expanded to include managers in the review process. NMFS has instituted procedures to get OPM institute certification of stock assessment scientists. NMFS' Fisheries Science Centers have been identified as financial management centers (FMCs). This structure holds the Regional Science and Research Directors accountable for expenditures of science funds.

QUESTION:

In the Pacific Northwest, through the Columbia River Fisheries Development Program, NMFS, over the years, has funded a modest program to install fish screens for irrigation diversions in Idaho, Oregon and Washington. These screens help save fish by preventing irrigation diversions from sending salmon into dead-end canals and onto farmers fields.

Please provide the committee with the total amount requested in the budget, appropriated, and spent in each state for these screens each year from FY 1986 through and including the FY 1992 request. Is this program funded pursuant to the Mitchell Act hatchery line item or from another program project or activity? Please provide for the committee the specific source or sources for this funding.

ANSWER:

The table below details the amount of money that has been spent on the fish screen portion of the Columbia River Fisheries Development Program in the years 1986 through 1990, the amount appropriated for 1991, and the President's 1992 request. The funding for the screen work is covered by two line items in the budget, Pacific Salmon Treaty and Enhancement of Stocks (8L1A9F) and

Stewardship of Anadromous Resources (8L2A1J). All of the funding for the Idaho Department of Fish and Game comes from 8L1A9F. The funding for Washington Department of Fisheries comes from 8L2A1J. For the Oregon Department of Fish and Wildlife, the funding comes from both line items but most is covered under 8L1A9F. Of the amount shown in the table for FY 1992, $650K was included in the request for the Pacific Salmon Treaty program funding. The remainder of the FY 1992 amount was requested as a part of the Fisheries Management Programs base program.

Expenditures on Fish Screens: 1986-1991 and 1992 Proposed

	1986	1987	1988	1989
Or.	$460,197	$460,197	$492,936	$572,300
Wa.	22,314	30,410	18,477	34,652
Id.	375,215	376,900	407,970	488,116
Total	$857,726	$867,507	$919,383	$1,095,068

	1990	1991	1992
Or.	$572,300	$600,916	$600,916
Wa.	24,631	24,631	24,631
Id.	488,300	541,432	541,432
Total	$1,085,231	$1,166,979	$1,166,979

QUESTION:

The importance of screening irrigation diversions was one measure the recently completed Salmon Summit agreed to implement.

Specifically, what has NMFS done to inventory diversion structures which impact the fish runs and to prioritize screening needs? Please provide a copy of any recent report on this important matter.

ANSWER:

NMFS has been aware of the need to develop a plan to assure that all irrigation diversions in anadromous fish habitat are screened. It has been the practice to ask the agencies involved to develop 5-year plans which detail new construction over that period as well as operations and maintenance needs and a schedule for needed major repairs and/or replacement of existing screens. A number of the screens that are now in place are over 30 years old and are in need of either rehabilitation or replacement. The states have periodically updated these plans. Recently, we instructed Oregon Department of Fish and Wildlife and Idaho Department of Fish and Game to prepare new 5-year plans with an emphasis on identifying any unscreened diversions. Attached are drafts of the reports that have been submitted to us for review. These reports should only be viewed as drafts because we have suggested some major revisions. In the case of Idaho's draft, the dollar amounts will be revised considerably. Oregon is also in the process of developing cost figures. In the case of Washington Department of Fisheries, they are just now in the process of developing their 5-year work plan. From the beginning, due to Washington Water Law, their involvement in the NMFS funded screening program has been limited.

QUESTION:

In your professional opinion, how much funding could be effectively used in FY 1992 and in FY 1993 to aggressively pursue installation of fish screens?

ANSWER:

It is our opinion that a funding level of $1,167K is appropriate to meet criticial mission priorities (i.e., top priority screen installation and maintenance) in FY 1992 and FY 1993.

GLOBAL CHANGE

QUESTION:

You have requested a $30.8 million increase in the NOAA budget for Global Change activities. What efforts are being made to coordinate research efforts with other federal entities studying global change?

ANSWER:

NOAA is a part of an active interagency effort to ensure that the Federal Government develops an integrated, interagency program. Under the umbrella of the President's Office of Science and Technology Policy is the Federal Coordinating Council for Science, Engineering and Technology (FCCSET). FCCSET has a Committee on Earth and Environmental Sciences (CEES), which in turn has a global change research working group. Nine agencies, including NOAA, meet regularly under CEES auspices to develop priorities and budgets, plan, and monitor the Federal Government's climate and global change research.

Each year, CEES produces a document, Our Changing Planet: The FY xx Research Plan, (xx indicates the year of the plan) which outlines the goals, implementation strategy, and research budget for the U. S. Global Change Research Program. The scientific objectives of the research plan are to monitor, understand, and, ultimately, predict global change. The report outlines a priority framework for focusing and integrating the interagency research efforts to ensure that they meet these objectives. This priority framework was derived from numerous research priorities outlined by both the U. S. and international communities. It indicates research areas that require progress to improve our understanding of both natural and human-induced global changes. NOAA's FY 1992 budget proposal, as well as those of the other CEES agencies, is based on this plan, a copy of which is attached.

QUESTION:

Your budget proposes a $18.38 million decrease in Resource Information under Information Collection and Analysis; a $12.39 million decrease under Fisheries Management Programs; a $5.6 million decrease in Fisheries Development Program; and zeroing out Grants to States under State and Industry Assistance Programs. All totaled, a $44.4 million reduction for NMFS.

How can NMFS manage and develop programs and get accurate information on the success or failure of hatcheries, potential Endangered Species Act listings, and other vital issues if these funding decreases are approved?

ANSWER:

The FY 1992 President's budget reflects needed funding for base programs and programs increases for national and regional priorities. The FY 1992 request will enable NMFS to meet its legislative responsibilities and handle new challenges in the arena of fisheries management and conservation.

VENTS PROGRAM

QUESTION:

Dr. Knauss, during meetings we had last year, you informed me that the VENTS program was among your most important and successful research programs. Since that time, VENTS has made several exciting discoveries relating to volcanic activities along the sea floor and has received wide media coverage.

Why is the VENTS program zeroed out?

ANSWER:

The VENTS program has been zeroed out because research previously conducted by NOAA, other Federal Agencies and universities already provide an understanding of seafloor spreading processes. Furthermore, economic and legal circumstances indicate that commercial development of seafloor mineral deposits is unlikely in the near future.

NMFS - NEEDS ASSESSMENT

QUESTION:

A 1990 report entitled "Needs Assessment of the National Marine Fisheries Service", from the National Fish and

Wildlife Foundation details a number of serious problems and deficiencies in virtually every area of NMFS.

In the area of overall administration, the report indicates that NMFS "suffers from ... historic weak leadership from (headquarters) both the offices of the Under Secretary, who oversees NOAA, and from the Assistant Administrator for Fisheries, who directs NMFS ... NMFS lacks the stature it needs, both within NOAA and it's parent body, the Department of Commerce". The Foundation's report also recommends upgrading the Assistant Administrator's position within the Department.

What is the Department doing to address this concern? Do you foresee structural changes within the Department?

ANSWER:

The 1991 report entitled "Needs Assessment of the National Marine Fisheries Service" from the National Fish and Wildlife Foundation provides, among other things, an update/progress report on items and issues from its 1990 report. With respect to agency leadership, the Foundation indicates that "NMFS gained a strong leader with the appointment of Dr. William Fox". At this time the Department plans no further action.

QUESTION:

The Foundation also points out that NMFS does not prepare an annual report on activities or on the status of fishery and other resources it manages. Consequently, it is impossible for Congress or the public to obtain a succinct summary of what the agency is doing or how well the resources it manages are faring.

Do you now prepare an annual report? What process do you have to evaluate the agency's effectiveness?

ANSWER:

NMFS is preparing its first annual report on the status of living marine resources. This first report will be published in September, 1991. In addition, NMFS is preparing more detailed reports for each Region on the status of the fishery resources. These reports will be published in October, 1991. There also are new regulations (602 guidelines) that require formal reviews of each fishery annually and the production of a status report annually.

QUESTION:

The Foundation indicates that NMFS and its regional offices do not have strategic plans available for any of its major programs. "Thus, the agency has no way of systemically identifying and responding to emerging problems and issues other than through the annual budget process." Do you now have a strategic plan? If not, why not? If so, please submit it to the committee for review.

ANSWER:

NMFS is developing a plan to support the 1993 budget process. This plan will be available with the President's 1993 budget.

QUESTION:

The Foundation reported that NMFS' "budget document is difficult to understand and is uninformative ... lack of data keeps Congress in the dark about the real problems facing the agency."

What has the agency done to address these criticisms? Have you changed budget procedures? Are you improving information systems and program management? What specific measures are being implemented?

ANSWER:

NMFS is engaged in an ongoing review of its program management and information needs, as well as its budget structure. The outcome of the review will be incorporated into the 1993 budget process.

QUESTION:

The Foundation concludes that "the agency is over-tasked and seriously under-funded." Moreover, I note that the budget request for 1992 shows dramatic cuts and program terminations at NMFS which are proposed by and from within the Commerce Department's bureaucracy.

This doesn't seem to indicate an improvement in leadership, planning, or budgeting. Are any changes being proposed or implemented within the agency to address these serious problems?

ANSWER:

The FY 1992 President's budget reflects needed funding for base programs and programs increases for national and regional priorities. The FY 1992 request will enable NMFS to meet its legislative responsibilities and handle new challenges in the arena of fisheries management and conservation.

QUESTION:

The foundation report also found the research program is fragmented among science centers and laboratories and it lacks a plan to guide its research effort. "That NMFS cannot account for how it spends 60 percent of its budget or clearly show what it is achieving with its research funds is disturbing." (A) What are you doing to address this serious shortcoming? and (B) The Foundation report also points out that NMFS has been ineffective in preventing overfishing. "The foundation has identified 14 species, stocks, or other management units that are overexploited. Thus far, the Council/ NMFS' management arrangement has not been successful in preventing the unsustainable harvesting of these fisheries."

What are you doing to address this serious shortcoming?

ANSWER:

(A) NMFS disagrees with the finding that "it cannot account for how it spends 60 percent of its budget or clearly shows what it is achieving with its research funds." Agency research is conducted on both regional and national scales. Much of the research supports interrelated agency missions. Due to the large number of Congressional add-ons for NMFS, the budget is encumbered with numerous interest items that are routinely removed and put back in the budget. Consequently, the budget structure does not lend itself to an easy accounting of NMFS activities.

However, NMFS can account for its research funds and has achieved an increased level of assessment information that it supplies to the Regional Fishery Management Councils. The NMFS Senior Scientist meets regularly with the Science Directors to plan research activities. A current year operating plan is produced for each program. Each NMFS Science Center is producing an annual report of scientific activities.

NMFS is also revising its internal management to facilitate the clear communication to others of issues facing the agency and how the agency is responding to those issues. Furthermore, NMFS is currently developing a status of stocks report that will be available on an annual basis.

(B) The National Marine Fisheries Service recently published a revision to the guidelines that requires the Councils to prepare an objective and measurable definition of overfishing for each managed stock or stock complex. Fishery management regulations, as a result, will become more restrictive for those fisheries in an overfished or near overfished state. The guidelines also require the Councils to prepare a rebuilding program for any stock that is overfished.

QUESTION:

The Foundation report concludes that due to funding and staff cuts (originating within the Department), NMFS has "failed to meet statutory requirements in all areas, but particularly in its protected species and habitat problems. This problem appears to continue in FY 1993 where additional funds will be needed for making Endangered Species Act population status and listing determinations. Have you done an assessment of these additional needs?

ANSWER:

We are in the process of assessing alternative approaches that would address these issues. This assessment will be included in the FY 1993 budget request.

QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN, JR.

NATIONAL METEOROLOGICAL CENTER COMPUTER

QUESTION:

It is my understanding that the National Meteorological Center is going to shutdown an existing computer that has become cost prohibitive to maintain. This computer is needed to help the National Weather Service make atmospheric and oceanic predictions.

A few years ago, the Center acquired a Cray computer to support its operations through a sole source procurement basis. Since its installation in February 1990, the Cray computer has proven to be highly reliable and cost effective. (A) Is the National Meteorological Center planning on acquiring another Cray or are you going to open up the procurement process for competitive bidding? (B) If you opened up the bidding to other manufacturers, who would apply for the contract?

ANSWER:

(A) NMC plans to acquire a Class VII computer system through the appropriate competitive procurement process.

(B) Only two firms make computer systems capable of satisfying the computer needs of the National Weather Service - Cray Research Inc. of Minnesota and NEC of Japan. There are two other firms that may have systems in the future, Cray Computer Company of Colorado and Scientific Systems Inc. of Wisconsin. Additionally, it is possible that the massively parallel systems being manufactured by NCUBE, Thinking Machines, Intel and Kendall Square may be sufficiently developed to merit consideration in the next procurement process.

SEA GRANT

QUESTION:

(A) What is your Sea Grant request this year and how does that compare to last year's appropriation?

(B) What impacts will this have on the Sea Grant Program and specifically how will it impact Great Lakes Programs?

ANSWER:

(A) The Sea Grant request for FY 1992 is $24,977,000, a reduction of $18,095,000 from the level available in FY 1991. This decrease results from not requesting federal funding in FY 1992 for Sea Grant outreach efforts (primarily the Marine Advisory Service) or for continued zebra mussel research.

(B) The Great Lakes programs will be able to compete for research funding at about the same level as last year. Federal funding for marine advisory service agents will be terminated. Zebra mussel research will compete with other priorities for funding.

GREAT LAKES RESEARCH OFFICE

QUESTION:

What is the status of locating and opening the Great Lakes Research Office?

ANSWER:

There has been considerable discussion on this topic, but as you know there has been no resolution on the question of location of the office. Therefore we have taken no action to establish the office.

QUESTION:

If the office is to be opened in Michigan, this is absolutely unacceptable. There was the review which found in favor of Milwaukee; NOAA established the review criteria. There has been cooperation to try to resolve this issue. This back door approach will not work.

There has been cooperation between the states and delegations to resolve this issue. It is critical that you do not mess up this effort to increase the resources to the Great Lakes region.

What are you going to do about that?

ANSWER:

The only legislative direction given to NOAA on this matter so far is contained in section 118 of the Clean Water Act, which requires that the office be located within NOAA in a Great Lakes state. The intent of Congress to pursue this path apparently was reaffirmed last year by the amendments to the Clean Water Act, which preserved the authorization of funds for the Great Lakes Research Office, and by the Marine Research Act of 1990, which identified the Great Lakes Research Office as the Great Lakes counterpart to the regional research programs established under that legislation.

NOAA has an obligation under the Clean Water Act to establish this office. However, NOAA is prepared to respond to any forthcoming agreement when the Great Lakes states and delegations agree on a location for the office. In the absence of new information, NOAA's responsibility for establishing the Great Lakes Research Office should be on the basis of current budgetary circumstances.

NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

STATEMENT OF JOHN W. LYONS, DIRECTOR

ACCOMPANIED BY THOMAS A. GARY, BUDGET OFFICER

BUDGET REQUEST

Senator HOLLINGS. We will next hear from Dr. John Lyons, Director of the National Institute of Standards and Technology. For fiscal year 1992, the President is requesting $248 million, an increase of $32 million over current funding. This budget maintains extramural research programs such as the manufacturing technology centers at current levels and increases in-house research in a number of areas.

Dr. Lyons, we will include your statement in its entirety. You can highlight it or deliver it as you wish.

SUMMARY STATEMENT

Dr. LYONS. Thank you, Senator. Good morning. I will summarize, if I may. I am pleased to appear before you today. I have with me Tom Gary to my left, my Budget Officer, my Associate Director, Mr. Kramer, and the Director of the Office of Budget, Mr. Brown. This year, the President is requesting $248 million for NIST, an increase of $32.7 million or 15 percent over fiscal year 1991. This request includes $201.8 million in intramural appropriations and $46.2 million for the extramural programs.

The fiscal year 1991 budget increases reinvigorated the Institute's research program and allowed us to expand our linkages with U.S. industry in the development measurement-related science and technology and precompetitive, generic technologies with high commercial potential.

However, the demands for these services have continued to exceed our capability to respond. We are very pleased with the support given NIST in the President's fiscal year 1992 budget. In it, the President states:

> The budget proposes a 15-percent increase for a total of $248 million for NIST. The long-term budget projection will result in a budget for NIST that is approximately doubled by 1996. NIST carries out R&D which supports standards development and advanced measurement techniques, both of which are critical to improving product quality, allowing for effective use of new technologies and improving public safety.

Our budget request contains important increases which will allow us to undertake some needed catchup, given the fact that we have had, until very recently, an essentially flat budget.

In fiscal 1992, $22 million of our proposal for intramural research initiatives is for new laboratory projects. In addition, $10.4 million is needed for adjustments to base. We are also requesting $4 million for critically needed and overdue refurbishment of the

Institute's 25- to 35-year old laboratory facilities to correct safety and environmental problems and upgrade inadequate heating, cooling, and electrical systems.

Our long-term strategy for NIST requires that the Institute's facilities be brought up to today's standards for a first-class research laboratory. The NIST Visiting Committee on Advanced Technology stated in its 1990 annual report to the Secretary of Commerce, that, quote, "Perhaps no other budget item is as important to the long-term well being of the institute—"than rehabilitation of its facilities.

I will now discuss very briefly the program increases in the budget. For the Electronics and Electrical Engineering Laboratory, we are requesting an increase of $11.5 million for new work in semiconductors, magnetics, superconductors, microwaves, and lightwaves. For the Manufacturing Engineering Laboratory, our budget request is for an increase of $4 million for expansion of the intelligent machines research program and for work in the product data exchange standards known as PDES/STEP.

For the Chemical Science and Technology Laboratory, our budget request is for an increase of $1.5 million for new sensors and additional reference data, especially for chlorofluorocarbon alternatives.

For the Materials Science and Engineering Laboratory, our request is $1.2 million for additional work in intelligent materials processing. For NIST's Building and Fire Research Laboratory, we are requesting $1 million for the formulation of seismic safety practices for lifelines such as water, power, gas, sewage, and communications lines. Currently, there are no standards available to measure the adequacy of seismic design and construction of the existing lifelines and systems and to guide the design of new systems.

NIST's request for the Computer Systems Laboratory is for $2.8 million for NIST to more completely fulfill the requirements of the Computer Security Act of 1987 and to accelerate the development of emerging ISDN standards.

Turning to our extramural programs, while the request is for $2.9 million less than fiscal year 1991, the fiscal 1992 program obligations will be increased to $49.6 million due to carryover funding. These new programs provide unique opportunities for U.S. companies to share with the Federal Government the financial risks of developing and implementing new and improved manufacturing technologies.

The request for the Advanced Technology Program is $35.9 million, equal to the fiscal year 1991 appropriation. Selection of proposals for the ATP awards, the first of which were announced on March 5, 1991, is based on a multistage review process involving both technical and business experts. We received 249 applications for research funding under this first competition. About one-half of the applications were in electronics and materials science, and a significant number were in information technology, manufacturing, energy, and environmental science.

The 11 proposals we have selected cover computer memories, electronics and other manufacturing, advanced superconductors, and information technology. We expect to issue an RFP for the second round of competition later this spring.

For the manufacturing technology centers, we are requesting $10.3 million. Six regionally based centers serving approximately 2,400 small- and medium-sized manufacturing companies will be funded with this appropriation. We have selected two more for cooperative funding during fiscal year 1991, one in Ann Arbor, MI, and one in Topeka, KS. We are requesting the termination of the State extension program, because the functions performed are being accomplished through other NIST and other Federal programs.

PREPARED STATEMENT

We will be focusing our efforts in this area on activities under the ATP and MTC programs.

That completes my summary, Mr. Chairman. I will be happy to take any questions.

[The statement follows:]

STATEMENT OF JOHN W. LYONS

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to request appropriations for the National Institute of Standards and Technology (NIST) for fiscal year 1992, and to discuss the programs and activities of NIST.

This year the President is requesting $248 million for NIST, an increase of $32.7 million, or 15-percent, over the fiscal year 1991 appropriations of $215.3 million. This funding request includes $201.8 million in intramural appropriations and $46.2 million in extramural appropriations.

I am pleased to report that the President's long-term budget projections for NIST will result in a budget that is nearly doubled by 1996. The Administration, Secretary Mosbacher and Under Secretary White have been very supportive of NIST. This long-term budget strategy continues the effort begun in fiscal year 1991 to expand NIST's ability to provide appropriate technical support for the American economy. The strategy to strengthen NIST research programs in support of U.S. industry in economically important areas such as electronics, advanced materials, computers, communications, industrial chemical technology, and manufacturing. Collectively these fields are a powerful driving force for the U.S. civilian economy. It is largely in these fields that technology advances are creating multi-billion dollar markets for new products.

The decade of the 1990's may be the most exciting and demanding for NIST since it was created as NBS in 1901. The Omnibus Trade and Competitiveness Act of 1988 rechartered us as a new Institute—NIST—by establishing new programs and approaches on the foundation established by the National Bureau of Standards (NBS). The Act confirms the importance of the prior NBS functions, and sets out the primary mission of the new NIST—the promotion of competitiveness of U.S. industry. The Act gives the Institute explicit new authority to help industry develop measurement-related and other precompetitive, generic technologies and adds new capabilities—a set of innovative, extramural programs.

Today, NIST is a far different laboratory than it was as NBS. We have over a thousand guest scientists, with approximately 200 directly from industry, working at NIST with our scientists and engineers. Currently, we have entered into one hundred and three cooperative research and development agreements with industry and academia, and have fifty-five more in process. We have made the first set of awards under the Advanced Technology Program (ATP). The ATP provides funding directly to U.S. businesses and consortia for the development of precompetitive, generic technologies. We now have five Regional Centers for the Transfer of Manufacturing Technology—three in operation in South Carolina, New York and Ohio; and two new ones in Michigan and Kansas. Under the state extension program, we awarded funding to nine states for two types of demonstration projects. We will announce a fiscal year 1991 competition for funding under this program shortly.

We believe this set of expanded activities can enhance NIST's abilities to respond to the needs of industry and the U.S. economy. These partnerships with industry, academia, and state and local governments have the potential to increase the leverage and economic impact of the Institute. However, we must realize that the extramural programs are both innovative and experimental requiring careful evaluation.

To this end, the original three MTC's will undergo a full outside review during this year.

We view NIST's mission as containing three main elements—enhancing industrial competitiveness, selected programs in public health and safety, and support for the scientific and engineering community. These are consistent with and strongly supportive of Department of Commerce and Technology Administration goals.

In partnership with industry and government, NIST conducts research and provides measurement-related technical services to enhance the competitive posture of the United States in global markets. This partnership covers the entire cycle from definition of needs and ranking of priorities, through execution of research programs, to making the results available to U.S. industry.

NIST conducts research in selected areas of public health and safety and the environment, again in partnership with industry and government. Some of these are mandated by special statutes—earthquake hazard mitigation, elimination of chlorofluorocarbons—and one, fire research, is part of the basic NIST authorization.

The final element of our mission is a broad program of scientific research to underpin the technology programs. In addition, this scientific research is motivated by NIST's charter to provide technical services to the scientific and engineering communities. These activities range from fundamental inquiries into natural phenomena to improving our knowledge of the fundamental constants on which the sciences depend for quantitative work.

In fiscal year 1991, the Institute received a 31 percent increase over the previous year in its combined intramural and extramural appropriations. These increases included a 10 percent increase in intramural appropriations and the rest was for the new extramural programs. These increases reinvigorated the Institute's research programs and allowed us to expand our linkages with U.S. industry in the development of measurement-related science and technology and precompetitive, generic technologies. However, the demands for NIST's services continue to exceed our capability to respond. We are very pleased with the support given NIST in the President's fiscal year 1992 budget. In it, the President states "The Budget proposes a 15 percent increase to a total of $248 million for NIST. The long-term budget projection will result in a budget for NIST that is approximately doubled by 1996. * * * NIST carries out R&D which supports standards development and advances measurement techniques, both of which are critical to improving product quality, allowing for effective use of new technologies, and improving public safety." Our budget request contains important increases which will allow us to undertake some needed catch up, given the fact that we have had, until very recently, an essentially flat budget.

The $35.6 million increase for NIST intramural programs and facilities for fiscal year 1992 represents a 21.4-percent increase over fiscal year 1991 funding levels. While the extramural fiscal year 1992 request is $2.9 million less than that of fiscal year 1991, fiscal year 1992 program obligations will be increased to $49.6 million due to carryover funding.

In fiscal year 1992, $22 million of our proposal for intramural research initiatives is to support new laboratory projects including: the accelerated development of measurement technology and standards for semiconductors, high-temperature superconductors, intelligent machines, advanced microwave and fiber optic communications systems, and materials synthesis and processing; the establishment of security criteria and evaluation measures for computer and telecommunications operating systems; the collection of thermophysical property data needed to develop alternatives to chlorofluorocarbon refrigerants; and the development of safety practices and construction standards to protect "lifeline" systems from damage during earthquakes.

In addition, $10.4 million is needed for adjustments to base to account for cost of living increases. We also have budget decreases totalling $750,000 in intramural programs. Our extramural programs are being decreased by $2.9 million in 1992. I will discuss these all in more detail.

We are also requesting $4 million for critically needed and overdue refurbishment of the Institute's 25 to 35 year old laboratory facilities to correct safety and environmental problems and upgrade inadequate heating, cooling, and electrical systems.

Our long-term strategy for NIST requires that the Institute's facilities be brought up to today's standards for a first-class research laboratory. The NIST Visiting Committee on Advanced Technology stated in its 1990 annual report to the Secretary of Commerce that "perhaps no other budget item is as important to the long-term well-being of the Institute" than rehabilitation of its facilities. One of the principal deficiencies of current NIST facilities is the technical obsolescence of temperature, humidity, air cleanliness, and vibrational controls. With today's ultra precise measurement needs (substances often must be measured at the part-per-billion level), high-quality, reliable environmental controls are essential.

We also face safety and environmental problems caused by outdated underground storage tanks, overhead cranes, and electrical transformers, as well as inadequate fire and mechanical alarm and control systems. Failure to bring the NIST facilities up to current fire codes will endanger employees and risk much higher costs from a catastrophic failure.

We are severely strained in our capacity for providing heating, cooling, and electrical service. The chilled water system that provides heating and cooling to the Gaithersburg facilities routinely runs at full capacity. It can no longer meet the needs of NIST's energy-intensive research, and we have no back-up utility system to avoid the extremely high research and financial costs that would result from disruptions in service. In addition, the Boulder laboratories already have experienced two site-wide power outages in 1990 due to inadequate power supplies.

I would now like to discuss some of our laboratory research program accomplishments and our fiscal year 1992 initiatives.

ELECTRONICS AND ELECTRICAL ENGINEERING

In U.S. manufacturing, the electronics industry is the largest employer and is tied for first place in shipments with the chemical industry. Electronics exerts an extraordinary influence on the performance of every other U.S. industry and is undergoing an unprecedented rate of change as new technologies emerge. In the process, the electronics industry is outstripping available measurement support, seriously hampering U.S. competitiveness in an industry that relies so heavily on measurements.

Our laboratory programs support the fundamental electronic technologies of semiconductors, magnetics, superconductors, optical fibers, microwave communications, electrical power systems, and electronic measurement instrumentation.

NIST is currently working, in collaboration with the Defense Advanced Research Projects Agency, to provide the first U.S. facility for industry-government collaboration in the characterization of digital image processing strategies. This facility will enable industry to evaluate key aspects of advanced imaging, from resolution to frame rate, to compression algorithms, in close contact with NIST staff who can identify key measurement barriers inhibiting the emergence of this new technology.

Just recently, a patent was issued on a NIST transconductance amplifier design which can source currents up to 35 A rms at 100kHz, with short-term instability of less than plus or minus 25 parts per million. This combination of output current and frequency exceed by a factor of 15 the previous best for transconductance amplifiers. Several companies have expressed strong interest in the NIST amplifier, and one company is finalizing a licensing agreement that will permit it to market a commercial product based on the NIST design.

In our fiscal year 1992 budget request, we are requesting an increase of 121 positions and $11.5 million in the area of Electronics and Electrical Engineering.

A strong electronics industry is a vital component of maintaining a competitive industrial nation. Semiconductors play an important role in this industry. We are requesting 39 positions and $4 million to address more comprehensively the program of technical support services for the electronics industry for new generations of semiconductor devices, a program which was started in fiscal year 1991. The National Research Council has said, "Over the past three decades, no single field of science or engineering has had a greater impact on the national productivity and quality of life in the United States than has semiconductor microelectronics."

This request includes 14 positions and $1.5 million for the establishment of a formal program in magnetic measurement technology. NIST researchers will develop new measurement technologies capable of determining magnetic properties in dimensions of only a few hundred billionths of a meter. This technology is critical for developing increasingly high-density magnetic disks used in personal computers and many other applications.

We are also requesting an increase of 20 positions and $1.8 million for expansion of the current highly successful fundamental research program in superconductivity to include more applied tasks as we move closer to commercial production of superconducting materials. These tasks include development of standards, measurement technology, and data for specific engineering applications of superconductivity.

We have requested 18 positions and $1.9 million for the development of new measurement methods and standards to help industry develop and market new microwave products with higher performance and information-handling capacity. Microwave systems are essential to emerging applications of remarkable scope, including digital pocket cellular radio telephones with worldwide access, expanded worldwide corporate and government communications systems, and advanced video.

And last, in the area of electronics, we are requesting 30 positions and $2.4 million for further enhancement of the lightwave measurement technology program. The increase will allow full funding for better methods to measure the performance of modulators that transform lightwaves into optical signals and couplers that combine or split lightwave signals among optical fibers. This increase would also cover measurement development for integrated circuits and related electronics that combine optical and electrical signals. Over a 10-year period, economic benefits in improved industrial productivity from this NIST program in lightwave measurement is expected to exceed $1 billion.

MANUFACTURING ENGINEERING

NIST programs also support the U.S. mechanical engineering industry through research and measurement services oriented to a modern automated environment. The discrete parts industrial sector served by these programs produces over 10 percent of the total gross national product in manufacturing and includes the automotive, commercial aircraft, consumer electronics, and machine tool industries. Over half the U.S. trade deficit is in this industrial sector.

In manufacturing, post process inspection, which is essentially a sorting process, can no longer meet the demands for low cost quality. An example of ongoing NIST work in this area is a new system pioneered at NIST that uses computer based process control to assure that one "makes it right the first time." In-process error correction of the machine is a vital element in this new algorithm. We are currently applying this new system to a turning center (lathe) on some of the most demanding products in the world: level one fasteners for nuclear submarines. These ongoing efforts will provide increased expertise and further refine the error correction of control systems.

Our budget request for fiscal year 1992 in manufacturing engineering is for an increase of 46 positions and $4 million. Our request includes 32 positions and $2.5 million for the expansion of the intelligent machines research program that addresses fundamental problems faced by U.S. industry in developing a new generation of intelligent machine systems. These new systems will operate from data supplied by computer-aided design and engineering systems in standard data format, and will use sensors to measure the manufacturing process and to correct automatically for variations and defects to achieve higher quality at lower cost. To help facilitate the use of intelligent machines, NIST will research design principles and models of production processes, as well as advanced sensors and better methods of representing knowledge in forms machines can interpret.

In addition, we are requesting 14 positions and $1.6 million for the Product Data Exchange Standards known as PDES/STEP. This standard would allow U.S. manufacturers to better integrate product design, manufacturing, marketing, maintenance, and improvements, an area that has been a traditional weakness for many U.S. businesses. The standard would provide a way for manufacturers to express all useful information about a product's dimensions, materials, performance characteristics, and other data in a digital form accessible to its suppliers, contractors, and other supporting groups. The multi-enterprise concurrent engineering approach facilitated by PDES/STEP can produce reductions of 50 percent in engineering design changes, 40 percent for total product development time, 30 percent in manufacturing costs, and 75 percent in scrap produced and reworking needed. I would like to note that in-house research in manufacturing directly supports our ability to transfer leading edge manufacturing technologies and techniques to the private sector through programs such as the MTC's.

CHEMICAL SCIENCE AND TECHNOLOGY

Quality is a very important component of success in international markets, and the ability to make accurate and precise chemical compositional measurements is a prerequisite for producing quality products in many industries. The chemical, energy, health care, biotechnology, electronics, and materials processing industries are key users of chemical measurements and chemical engineering technology data. This past year, NIST organized a consortium of industry and government researchers with the goal of developing a prototype automated analytical chemistry laboratory. The aim of the Consortium on Automated Analytical Laboratory Systems is to help the U.S. chemical industry to utilize major advances in automation by producing a generic automated laboratory which can be readily adapted by members for their individual needs. We are currently working with the consortium to develop initial designs for uniform sample and information transfer protocols (hardware and software) between modules; and to complement the efforts of instrument manufacturers to automate the detection and data reduction components of the analytical chemistry process. We are assembling the first prototype module for an inorganic automated analytical laboratory system which will consist of a weighing station, microwave oven and robotic sample handler under computer control.

As part of our ongoing programs, we are also working with the health industry to develop two-dimensional electrophoretic separation techniques, computer-based imaging techniques, and multivariate data analysis methods for correlating cellular protein modulation in human biopsy materials with diagnosis, treatment, or chemoprevention of cancer.

Our fiscal year 1992 budget request for chemical science and technology is for an increase of 13 positions and $1.5 million.

Additional investments in chemical measurements and standards will be focused on supplying high-technology industries with the sophisticated new measurement methods and devices they need to produce a wide array of products to an ever higher degree of specifications. The measurement costs incurred in these high-technology industries are three to five times higher than in those using traditional technology. For some manufacturing applications, chemical testing can account for 80 to 90 percent of unit production costs. The optical and electrochemical sensors which will be developed by NIST researchers through this initiative could be used by industry to make on-line measurements that significantly reduce the number of rejected products and the amount of waste created during manufacturing. This requested increase also covers expanded NIST capabilities in producing the latest versions of sophisticated mass spectrometry data and in collecting thermophysical properties data needed for the development of alternatives to chlorofluorocarbon refrigerants.

MATERIALS SCIENCE AND ENGINEERING

Technological progress in such diverse fields as electronics, construction, energy, communications, and transportation hinge on the development of advanced materials with properties and performance characteristics far superior to materials used today. Research on advanced ceramics, metal alloys, polymers, composites, and the new high temperature superconductors has already revealed some of the future technological opportunities, including the ability to microengineer materials to create structures and combinations of elements unknown in nature, that have resulted in properties and phenomena unachievable until recently. The challenge for industry is to transform these materials from laboratory curiosities to viable products and manufacturing processes.

Part of NIST's ongoing work in this area is to provide needed advanced measurement capabilities for the characterization and development of classes of advanced materials. Current NIST research in materials science and engineering includes research to develop sensors for improvements in sheet steel processing, to better understand the performance of polymer composites, to characterize thin films important in electronics and coatings, and to evaluate advanced materials for microelectronics packaging.

We now have two new workstations in operation at our Cold Neutron Research Facility—the 8-meter small-angle neutron scattering spectrometer (SANS) and the cold neutron depth-profiling instrument (CNDP). With the SANS the measured neutron intensity on a sample is greater than 85 percent of the intensity achieved in the reactor hall, with a signal-to-noise ratio more than four times better. A variety of experiments have already been conducted, including studies of colloidal mixtures under shear, temperature dependence of bonded phase structure in microporous silica, polymer conformations in blends, ultrathin films and solutions, microemulsions, and high temperature superconductors. The CNDP is a nondestructive technique for determining the near-surface atomic composition of semiconductor and other advanced materials. It is capable of operating under ultra-high vacuum conditions and has incorporated many design features that enhance previously available capabilities. The CNDP provides the capability to study problems which cannot now be attempted, including the location of impurities that may lead to circuit failure. Initial measurements completed on Co-Ni Oxide have provided the near-surface distribution of oxygen for the first time by any nondestructive technique, anywhere in the world, and confirms the order-of-magnitude increase in sensitivity which was predicted for the cold neutron research facility.

Our initiative request for fiscal year 1992 in materials science and engineering is for 10 positions and $1.2 million.

Annual U.S. shipments of advanced materials and products made from them are currently valued in excess of $70 billion. The greatest barrier to industrial use of advanced materials is a lack of reliable process technologies that consistently yield high-quality products at low cost.

Our initiative in this area will expand a fiscal year 1991 initiative in intelligent processing of materials. NIST researchers will develop the generic technology base necessary to measure the performance of and establish standards for future generations of intelligent materials processing. This research will include creating a prototype version of a database that can control a manufacturing process so that it automatically achieves reproducible, well-controlled, and specifically tailored properties in a finished product.

BUILDING AND FIRE RESEARCH

In the NIST's building and fire research program, we provide technologies to predict, measure and test the performance of construction and fire prevention and control materials, components, systems and practices; and conduct research in earthquake hazards reduction. NIST's current programs also assist the construction and fire safety communities in achieving the benefits of advanced computation and automation in order to increase the usefulness, safety and economy of buildings, to improve the productivity and international competitiveness of the construction industry, and to reduce the human and economic costs from unwanted fires and earthquakes. NIST currently performs and supports laboratory, field and analytical research on the performance of construction materials, components, systems and practices, and the fundamental processes underlying initiation, propagation and suppression of fires.

This past year, NIST issued a database for refrigeration engineers, chemical and equipment manufacturers, and others who work with clorofluorocarbons to use in evaluating the performance of alternative refrigerants and refrigerant mixtures for use in building cooling systems, large cooling equipment, and appliances. The database package enables the user to assess several environmentally acceptable refrigerants and mixtures as possible replacements for currently used materials. It is also useful to help determine the efficiency and capacity of a wide range of equipment that will operate with alternative refrigerants.

NIST is also currently providing the Chairman and Secretariat for the Interagency Committee on Seismic Safety in Construction which is implementing the President's Executive Order on Seismic Safety in new Federal buildings. The guidelines and procedures to implement the Executive Order which requires the use of seismic safety practices and regulations in the construction of new buildings owned or leased by the Federal government, or constructed with federally-assisted funding have been drafted.

In building and fire research for fiscal year 1992, we are requesting 5 positions and $1 million for research in earthquake hazard reduction. The National Earthquake Hazards Reduction Program (Public Law 101–614) gives NIST responsibility for carrying out research and development to improve building codes and standards and practices for structures and lifelines. This new funding will support the formulation of seismic safety practices for lifelines such as water, power, gas, sewage, and communications lines. Currently there are no standards available to measure the adequacy of seismic design and construction of existing lifelines and systems and to guide the design of new systems.

COMPUTER SYSTEM

Through research in computer systems, NIST currently promotes the international and federal government acceptance and use of an integratable, "open" computer and communication environment and provides guidance on computer security needed to protect the information assets contained in computer based information systems. As part of its ongoing work, NIST is a major sponsor of the North American Integrated Services Digital Network (ISDN) which brings together vendors of telecommunications equipment and major customers to promote digital public networks. The group developed implementation agreements and tests to verify conformance of computer equipment to international standards. Such tests and agreements ensure that ISDN products and services from different manufacturers and vendors are compatible and provide the user with defined applications. In a related project to develop uniform international computer standards, NIST researchers worked with their European counterparts to harmonize criteria for trusted computer systems.

NIST's request in the computer systems area is for 34 positions and $2.8 million to enable NIST to more completely fulfill the requirements of the "Computer Security Act of 1987" and accelerate the development of emerging ISDN standards.

We are requesting 14 positions and $1.1 million for expansion of current NIST activities to comply more fully with the Computer Security Act of 1987. This act as-signs to the Institute responsibility for developing cost-effective measures to protect against computer "viruses," "worms," and other types of malicious software. Current computer systems and networks are so complex that it is extremely difficult to control access to them or even to detect their unauthorized use. It is also evident that advanced technical threats, such as viruses, represent growing and serious dangers.

With this additional initiative funding, NIST will help the federal community improve the security of its existing systems. NIST will also work with the National Security Agency and the European Community to establish criteria and evaluation measures for computer and telecommunications operating systems, to allow them to be accredited as "trusted" information systems meeting agreed-on minimum requirements.

We are also requesting 20 positions and $1.7 million to continue the standards work begun in fiscal year 1991 for an ISDN that would allow simultaneous transmission of voice, text images, and data over telephone lines. This request includes $800,000 to support the President's High-Performance Computing and Communications (HPCC) initiative. Medium-speed transmission rates over such a network would occur at up to 600 million bits of information per second compared with standard telephone transmission rates of about 8,000 bits per second.

The requested funding will be used to provide for industry and government to work together in refining implementation of medium-speed base standards for this important new technology. It will also support work to evaluate the performance of parallel processing integrated circuits that will be used in generating ISDN signals.

PHYSICS

NIST conducts research to apply fundamental physical phenomena involving atoms, molecules, plasmas, condensed matter, and radiation to the development of advanced standards, measurement methods, and data bases in support of industrial research and development programs and emerging technologies. In a number of high technology fields, particularly those using electronic and optical devices, industry is evolving toward ultra-small, atomic-scale systems, and we must understand their performance and fabrication in terms of atoms and molecules. The growth of semiconductor devices and the magnetic properties of ultra-thin films depend critically on the structure of the first few atomic layers of material grown on a substrate. NIST currently has the experimental capability to study the atomic layer growth process and the effect that the microstructures have on electronic and magnetic properties. As a part of ongoing research, NIST showed, using scanning tunneling microscopy techniques, that we could move chains of Cesium atoms around on a Galium Arsenide substrate at room temperature. We were also able to creat cesium chain structures that do not naturally occur, using what we believe to be field induced diffusion.

ADVANCED COMPUTING AND ADJUSTMENTS TO BASE

We are also requesting $10.4 million in adjustments to base for fiscal year 1992. These funds include $2.5 million to continue the upgrade of the Institute's Scientific Computing System. In December we awarded a contract to Cray Research, Inc., for a new supercomputer system consisting of a Cray Y-MP2/216, which is a two-processor machine with 16 million 64-bit words of memory. This is the first stage of the planned modernization of our central scientific computing facilities, that also serve the National Oceanic and Atmospheric Administration's Environmental Research Laboratories, and the DOC Institute for Telecommunications Sciences. We are also requesting $909,000 to fund administrative costs associated with the Advanced Technology Program (ATP), $914,000 as a one-time adjustment to fund the increased cost of the guide tubes for the Cold Neutron Research Facility and $6 million for pay raise and other cost of living adjustments.

Decreases totaling $750,000 are being taken in fiscal year 1992. These include $250,000 due to the completion of the upholstery ignition project, $150,000 for the discontinuance of the non-energy related inventions program, and $350,000 in administrative savings stemming from the reorganization of the building and fire programs.

I would now like to discuss our extramural programs. While the extramural fiscal year 1992 request is $2.9 million less than that of fiscal year 1991, fiscal year 1992 program obligations will be increased to $49.6 million due to carryover funding.

ADVANCED TECHNOLOGY PROGRAM

The request for the ATP is $35.9 million, equal to the fiscal year 1991 appropriation. The ATP awards multi-year grants each year directly to U.S. businesses for the research on precompetitive generic technologies. The grants are awarded under shared-cost agreements in fields such as electronics and semiconductors, advanced manufacturing, advanced materials, information and communication, and biotechnology.

Selection of proposals for ATP awards—the first of which were announced on March 5—is based on a multi-stage review process, involving both technical and business experts. As directed by the Small Business Innovation Development Act of 1982, 1.25 percent or approximately $450,000 appropriated for this program will be directed to the Department of Commerce's Small Business Innovation Research Program.

During our first competition under the Advanced Technology Program, we received 249 applications for research funding. About half the applications were in electronics and materials science, and significant numbers were in information technology, manufacturing, energy, and environmental science. The eleven proposals we have selected amount to $9.2 million and cover computer memories, electronics and other manufacturing, advanced superconductors, and information technology. We anticipate issuing an RFP for the second competition later this spring. Award of about $24 million ($36 million less second year requirements for the first series) would take place in the first quarter of fiscal year 1992.

MANUFACTURING TECHNOLOGY CENTERS

For the Manufacturing Technology Centers program (MTC), we are requesting $10.3 million, a decrease of $1.6 million from the fiscal year 1991 level. This amount will be added to $3.4 million in fiscal year 1991 carryover funding for this program. Six regionally based centers serving approximately 2,400 small and medium-sized U.S.-based manufacturing companies will be funded with this appropriation.

We have three Regional Centers for the Transfer of Manufacturing Technology—in South Carolina, New York and Ohio—in operation. Secretary Mosbacher announced the selection of two more centers—in Ann Arbor, Michigan, and Topeka, Kansas—on March 7 for funding in fiscal year 1991. One new center will be selected in fiscal year 1992, and the five centers existing at the end of fiscal year 1991 will receive continued funding. This year the original three centers will undergo an extensive outside evaluation to determine their effectiveness.

The MTC personnel introduce companies to technologies and techniques which can improve quality and efficiency. The MTC's work closely with community and technical colleges to identify and serve smaller firms, and to provide work force training to accompany technology upgrades.

We are also requesting the termination of the State Extension Program, a decrease of $1.3 million in fiscal year 1992. The functions performed by the program are being accomplished through other NIST programs and other federal programs. We will be focussing our efforts in this area on activities under the ATP and MTC programs.

That completes my statement Mr. Chairman. I will be happy to answer any questions that you or the other committee members might have.

MANUFACTURING TECHNOLOGY CENTERS

Senator HOLLINGS. The centers, you say, are level funded; in other words, the five centers.

Dr. LYONS. The five centers are for fiscal 1991. The funding will be adequate to support six centers, including one new one in 1992.

ADVANCED TECHNOLOGY PROGRAM

Senator HOLLINGS. One new one, OK. Ann Arbor, MI, and Topeka, KS. The ATP request is for $35.9 million. How many participated in those requests?

Dr. LYONS. The first round we had 249 proposals; we awarded 11.

Senator HOLLINGS. Two hundred forty-nine proposals and you award only 11. You see, I read that, and then I turn the page to see where the administration has got $1 billion for military armament and weapons sales. Wouldn't it be grand if we had $1 billion in this budget to take care of the commercialization of our technology. It is at a measly $35 million.

That is like that fish they are trying to get rid of.

Senator RUDMAN. Endangered species, right.

Senator HOLLINGS. Here we are trying to get the economy going and get competitive; get high-level summit meetings on trade and now we have gone from the cold war to the trade war, and we put $35 million in and congratulate each other and say, "Let's go."

Senator RUDMAN. Of that 249, how many were worthy?

Dr. LYONS. I have asked that question. Some of them, of course, were rejected early because they didn't comply with the guidelines in the Request For Proposal.

Senator RUDMAN. I understand. How many were worthy?

Dr. LYONS. I would say about 40 were very high quality. So we only funded about one-quarter of the good ones.

Senator RUDMAN. The chairman's point, obviously, is that you are going to try to get out $36 million over the year, which means that you will probably be getting started on it and maybe get that out by what, by the end of this calendar year?

Dr. LYONS. Yes; surely by the end of the calendar year.

Senator RUDMAN. Before you leave that, Mr. Chairman, you know, last year we had some language in there which essentially restricted funding to American companies unless foreign companies could meet certain criteria, and we set the criteria. It is, after all, a program to help American industry.

Senator HOLLINGS. Right.

Senator RUDMAN. Do you have any problem if that language is reinstated in this year's proposal, the same language?

Dr. LYONS. The language is acceptable. I think the authorization bill wending its way through will also address that question.

Senator RUDMAN. Which bill?

Dr. LYONS. The authorization bill.

Senator HOLLINGS. The authorization bill.

Senator RUDMAN. However. Basically, we said that if foreign companies want to get involved in this, fine, but they have to establish whatever comes out of it here in this country. It was really not so much whether or not you were American or foreign, but you had to perform activities here in this country, since we are using taxpayer dollars.

I guess my simple question is that I assume the language continues to be satisfactory in one form or another.

Dr. LYONS. I understand the motivation for that language. In the first round we didn't have that restriction. You will notice that the 11 grants were to U.S. companies.

Senator RUDMAN. It would make little sense to take one of these grants and give it to the Hitachi Corp., to pick a name off the wall.

Senator HOLLINGS. They have got 90-some plants in Tennessee and the Tennessee Senator is on the floor to make sure that language is in there.

Senator RUDMAN. I don't have a problem with Hitachi getting it if they are going to put their plant in Tennessee or South Carolina or New Hampshire and employ Americans. That is a whole separate issue. I just don't want to see technology developed with United States money and then put into manufacturing facilities in Yokohama, Japan. That is the point.

Dr. **LYONS**. I couldn't agree more with that, Senator.

Senator **RUDMAN**. That is all we are trying to do.

Dr. **LYONS**. There are some difficulties on the margin when you are trying to figure out who owns what in some companies.

Senator **RUDMAN**. I understand.

Dr. **LYONS**. Most companies don't necessarily disclose who actually owns their stock. Such disclosure is not required. So we will determine some of that when we get into it.

Senator **RUDMAN**. We will look at it.

Senator **HOLLINGS**. You know, there really shouldn't be any stumble, because they ought to just say categorically, "We are trying to help. If you have got a part ownership, fine business."

We have got an office, South Carolina office in Tokyo, I am sure. I guess every Governor wants that. He has got an office in Brussels and one in Tokyo, and they like to visit those places and try to solicit industry. But if we don't get going on our own technology, that is what we are trying to play catchup ball, and take Greg Fields and let him go, and this whole NIST program level funding, but you come with weapons sales and you are supposed to try to control terrorism and wars and everything else of that kind, and bam, bam, it is $1 billion. We just announced a program for $1 billion.

NIST OUT-YEAR GROWTH

Is this going to be permanent, this doubling in 5 years? Is this a straight increase or is it coming from additional cuts in EDA or NOAA?

Dr. **LYONS**. I can't answer that question. The statement says that our laboratory programs are supposed to go up at a fairly steady rate of around 15 percent a year over the next 5 years.

I don't know where those funds come from.

Senator **HOLLINGS**. Do the OMB out-year budget projections include increases to double your budget through 1995?

Dr. **LYONS**. Yes, sir; the out-year projections do show that kind of growth.

Senator **HOLLINGS**. All right. I like the way you are running it, and I think your interest is shown. I think you could get more than 40 good ones if you had a lot of money there. You could really get more serious and everything else like that, but it is so competitive, 200 and some just on a wing hoping to get some Government money.

Let me yield.

Senator **RUDMAN**. I would just say, there are a lot of similarities to a program which I worked on about 8 years ago. In fact, it was the first major legislative initiative that I took called the SBIR Program, which I am sure you are familiar with. It was not an original idea on my part. Originally, it was under the National Science Foundation, and now we do it across the whole Government, and it is working.

Dr. **LYONS**. We are doing some of that, as well.

Senator **RUDMAN**. I know you are doing it. You look at the quality of their proposal and you look at the growth of that. Over the 8-year period, it is a story waiting to be written by some business writer. It is incredible what has happened with that money, such a small amount. We are talking about the same thing here.

NIST INTRAMURAL PROGRAM INCREASES

That brings me to a question. There is an estimate out there, I guess made by the Japanese, that there is going to be a total world market of $123 billion for superconductors by 10 years after the turn of the century, $123 billion by the year 2010.

One of your initiatives is $1.8 million to enhance research in superconductivity. If there is any place that I can think of in the Government—there are several—but the one place certainly is your agency where this ought to be done. Do you have enough money? Could you spend more if we gave you more in that area if it was earmarked?

That, to me, as I look at things, that and semiconductors, is where so much action is going to be.

What are you funding? What are you going to do with that money? How much are you going to be spending and what could you use?

Dr. LYONS. Our program there is small; I agree with that. It is going to come to $6 million with the addition of the $4 million requested here.

Senator RUDMAN. Right, but it is not very much.

Dr. LYONS. It is not very much, but on the other hand, it is similar to many programs that we operate. We are not trying to develop the products; we are trying to develop certain techniques that will enable industry to develop the products. So the leverage on our money, for example in standards and measurement techniques, is the underpinning that the company then uses to try to build the wire, cable, and their films.

Senator RUDMAN. I understand, but you employ engineers and scientists to do this work and you have, let's say, *x* number. What would happen if you had more? Wouldn't you get things done in more a rapid fashion and be of more help to the industry?

Dr. LYONS. Yes; we probably would.

Senator RUDMAN. It seems to me that those are two areas where the standards are very important, and you do them, and you do a good job.

Dr. LYONS. I think I said, Senator, in my statement, that there is a pent-up demand for our services, and that is one of the reasons that OMB has decided to give us this rather handsome amount.

Senator HOLLINGS. You are too modest. Go ahead.

Dr. LYONS. I was going to say that in the similar lightwave technology, which is the next generation in telecommunications, the same thing applies. We defined a program many years ago that we thought would only be about $10 million, and we are gradually building it up very slowly. I believe we have now made that case before OMB. We will get relatively better as we go along.

Senator RUDMAN. I would only join the chairman in saying that we have a lot of confidence in what you do. You seem to get a lot of bang for the buck. It is an agency that has very first-rate people, and I think it is deserving of support maybe even greater than that provided by OMB.

Senator HOLLINGS. Oh, the political hangup is to manage trade and get Government involved. "Let the market forces operate." You know, that sing-song. Just in the flash, Dr. Lyons, your position is natural and understood. At the end of World War II, we went with the Marshall plan. It worked; the Center of Technology, it worked. The multinationals learned that producing overseas was far cheaper and they could work the plan, so long as they kept the largest, richest market in the world open for dumping, namely, the U.S.A.

So they came back with the banks to organize a trilateral commission, and each had an emergency committee to judge the Tariffs and Foreign Policy Association.

Whoever runs for President invites you all and he gets your commitment, "Free trade, free trade, free trade," like monkeys on a string. Then you come down to retailers. Whenever we debate the bill, we fill up the desk with women's blouses from Bloomingdales, one from Taiwan, one from America, same price, catching mitts from Herman's, and everything else of that kind.

The retailers get in and, then look at the Washington Post annual report. Eighty percent of their income, revenues, are from retail advertising. So the retail advertisers are really into this money conspiracy, and they jump on and the Washington Post comes up with $800 million last year. Of course, that is joint with the Japanese and the fourth drum beat, then, is on the Senator, and if they don't hit him directly, they will hire a lawyer to hit him directly. Tacho says 110 law firms with over $113 million, the Japanese are better represented in Washington than the people of America in Congress. They have got more people, more money and everything else, and they are working them individually. Brother, with that combination, you get anything on trade, which comes to you.

You are the daisy, our last gasp to try to hold on to youth and technology and the development and everything else of that kind, because your reasoning is not commercialized here; it is commercialized there. It is just cheap. Why do you think everybody is running to Mexico? Man, they have got to try one; they don't want free trade. They want free production to bring it right back here and with no transportation costs, then you can put everything over there.

That is the competition you have got now, and they enter that sing-song, and they just don't want you to knock your head down any time you come to the $10 million or $30 million or whatever it is; $1 billion for weapons, but nothing for you. "Oh, we can't go in two different directions. We have got to have free trade."

I will send you a copy of it; the first bill to pass the National Congress in its history was a tariff bill on July 4, 1789, of 50 percent on 30 different articles beginning in New Hampshire. [Laughter.]

And going right down to steel and all now.

Senator RUDMAN. I have always said, Dr. Lyons, that no matter what the program says, this always turns out to be a trade hearing. [Laughter.]

Senator HOLLINGS. I want you to know your opposition and why you are getting that foot dragging and having a hard time getting the pennies coming through when the demand is there and it is working; it is well conceived, and you all are very capable folks.

But I tell you, we have got some trade policy, and the only danger to that is it is getting everybody else rich except the United States.

You can produce and put these small entities out.

Have you got anything further?

Senator RUDMAN. No; I appreciate your being here, and I personally am going to have my staff look at some aspects of this, because I am just wondering whether or not we ought to take some initiative here.

Senator HOLLINGS. You have got to.

Senator RUDMAN. And do some things here.

Senator HOLLINGS. The noncompetitiveness report came in, Warren, and you ought to see that report. I am telling you, it is a shocking report. We had it just before we broke, and man, it will sober you up. That is a good crowd. We have got all these folks in.

NIST EXTRAMURAL PROGRAMS

Senator RUDMAN. I think we are in a position here in a couple of these areas to maybe incrementally—considering we are working from a small base—find enough money to do a few things that ought to be done.

Dr. LYONS. If I may respond to that, I think that the two new programs that we have been talking about, the Advanced Technology Program and the MTC's, are now up and running. We have had 2 or 3 years' experience with the MTC's.

There are good ones out there. We are going to start a mid-term study of the South Carolina, Ohio, and New York centers which is called for in the statute. Here is an early report on those from our visiting committee and we are very pleased with it.

Senator HOLLINGS. I appreciate it. Good.

Dr. LYONS. The visiting committee took a look last year and was very impressed with the MTC's potential and I wanted you to have that report.

Senator RUDMAN. Good.

Dr. LYONS. Your staff has already seen the report. The first round of the ATP was kind of a pilot test. We needed to set up a process. We have gotten back very positive reactions so far from the technical community.

Senator RUDMAN. Did you have a peer review group or committee that you set up, or did you do it internally?

Dr. LYONS. We had all kinds of review.

Senator HOLLINGS. I am trying to defend myself. It wasn't a political thing.

Senator RUDMAN. You brought in peer groups to do the analysis?

Dr. LYONS. There were all kinds of reviews, and the unique aspect of the ATP Program is that it is aimed at people who are entering the market with new technology. We had to put a business review in. Because we don't know anything about it, we got people from industry to come in and sit on the committees to make their review.

Senator RUDMAN. We will look at this. Thank you.

Senator HOLLINGS. I don't want to hurt your feelings, but you can measure your importance. They cut off the TV camera. Now, they filmed the discussion with Dr. Knauss regarding sockeye salmon in the Northwest, but when you appear, it is off. [Laughter.]

ADDITIONAL COMMITTEE QUESTIONS

We will keep the record open for additional questions which will be submitted for your response.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR ERNEST F. HOLLINGS

Critical Technologies

Dr. Lyons, sometime within the next month or so the President's science advisor is going to release the first "National Critical Technologies Report." It will list some 22 key technologies in areas such as advanced materials, information technology, manufacturing and so forth. I imagine that this report, like the earlier Commerce Department report, will show that the U.S. is lagging behind in many areas.

QUESTION:

When this new report is finished, what "strategic plans" or "action plans" will you and other federal technology officials develop to make sure that the United States catches up in these key fields?

QUESTION:

What will you do to make sure that this new report does not just sit on the shelf?

ANSWER to 1 and 2:

In partnership with industry, NIST's programs seek to enhance the competitive posture of the United States in global markets. We do this by conducting generic research, providing measurement-related technical services, and leveraging U.S. industry's development of commercially important technologies such as those in the key fields to which you refer. The OSTP list is consistent with, but larger than the earlier Department of Commerce list. NIST will be guided in its planning and in its work at the policy level by these lists. NIST will incorporate programs in these areas where and when appropriate, use them in making choices in the external programs, and contribute to the revision of the lists from time to time.

Facility Investment

Dr. Lyons, the budget requests $4 million for facility projects.

QUESTION:

Could you review what projects this funding would be used for?

ANSWER:

The $4,000,000 increase requested will provide meaningful progress in addressing $27M in identified deficiencies in the areas of facilities **safety** and **system capacity** (detailed in the table which follows). The **safety** of NIST's facilities affects the health and well-being of three thousand employees and hundreds of guest scientists and visitors as well as the residents and workers of nearby areas in Gaithersburg and Boulder. The laboratories must be retrofitted to operate in accordance with a wide range of regulations (EPA and OSHA) which have, in recent years, become increasingly tight as health and safety hazards are better understood. NIST is facing a number of mandated expensive replacements and repairs, including underground storage tanks, fire safety retrofits, electrical transformers and power lines, and alarm systems.

NIST FIVE YEAR FACILITIES PLAN
($K)

	TOTAL REQUEST	FY91	FY92	FY93	FY94	FY95		UNFUNDED REQUEST
SAFETY								
FIRE SAFETY--BLDG. 101	1,600	0	360	640	600	0		0
FIRE SAFETY--LABORATORY	1,000	400	300	300	0	0		0
ALARM SYSTEM	4,000	60	1,400	1,000	1,000	540		0
STRUCTURAL REPAIRS	2,000	0	800	350	450	400		0
STEAM MANHOLE REPLACEMENT	1,845	0	290	250	700	605		0
FIRE SAFETY SYSTEMS	1,818	400	500	500	118	300		0
Subtotal, Safety	12,263	860	3,650	3,040	2,868	1,845		0
CAPACITY								
CHILLED WATER PLANT EXPANSION	3,858	0	1,100	2,000	758	0		0
VARIABLE SPEED PUMPING SYSTEM	4,548	140	0	1,000	2,000	1,408		0
ELEVATOR RETROFIT--LABORATORY	800	0	0	100	100	600		0
ELECTRICAL SUBSTATION	800	0	0	100	100	600		0
CIRCUIT BREAKER REPLACEMENT	1,600	0	0	100	150	1,221		129
HVAC PNEUMATIC CONTROLS	1,000	0	0	0	332	668		0
TRANSFORMER REPLACEMENT	560	0	0	103	140	317		0
ELECTRICAL--UNDERGROUND POWER LINES	700	0	0	233	234	233		0
ELECTRICAL--TRANSFORMERS	800	0	200	274	268	58		0
HVAC EQUIPMENT REPLACEMENT								0
BLDS 1/2/3/24	205	0	50	50	50	50		5
Subtotal, Capacity	14,871	140	1,350	3,960	4,132	5,155	0	134
TOTAL, SAFETY AND CAPACITY	27,134	1,000	5,000	7,000	7,000	7,000	0	134

In addition, the demand for utilities (cooling, heat, and electrical service) essential to the conduct of NIST's science and engineering research is beginning to exceed the **capacity** of the existing systems. The most pressing of these needs is increased capacity for the Gaithersburg chilled water system which provides cooling for laboratories and energy-intensive laboratory equipment as well as general air conditioning. This equipment includes the mainframe computer which serves not only NIST's two sites but five laboratories of the National Oceanic and Atmospheric Administration. In Boulder, laboratories performing cutting-edge research in cryoelectronics and lightwave metrology need higher levels of electrical power than existing transformers can provide. Additional power is also needed for semiconductor processing facilities needed for development of microwave standards based on integrated circuits and for research in integrated optical components.

In addition to identifying the **safety** and **system capacity** requirements addressed in this proposal, NIST formed a Facilities Technical Committee to solicit input from the laboratories on program-driven facilities needs -- **technical obsolescence**. Today's science requires a laboratory environment significantly different from that designed and built 25 years ago; air quality, filtration, temperature and humidity control, electrical power quality and reliability, vibration-free space, and inadequate fume hood ventilation are the areas where orders of magnitude improvement are necessary to meet the needs of today's measurement technology. NIST then contracted with an independent architectural and engineering firm (Smith, Henchman and Grylls Associates) to study the Institute's facilities deficiencies in the area of **technical obsolescence.** That firm is preparing a Capital facilities review to characterize these needs. This review will serve as the foundation for any future facilities improvement initiatives that the Administration may choose to endorse.

QUESTION:

Since the Department of Defense funds about one fifth of all research at NIST, why don't you request the Department of Defense to help out with rebuilding your facilities at Gaithersburg and Boulder? Under the Summit Agreement, defense is going to have all the money.

ANSWER:

Facilities modifications and retrofits generally fall into the category of capitalized expenses, i.e., expenses incurred in projects which increase the value of the site through expansion or upgrade. It would be improper for other agencies to directly finance NIST capitalized investments.

When the Gaithersburg, Maryland facility was constructed in the early 1960's, several special facilities were included that were dedicated to other agency requirements. An example is the 12 million pound force machine intended at that time to calibrate load cells used by the NASA space program. Funds directly appropriated to and managed by NIST (NBS) were used for all phases of the construction and user charges made to

NASA for work later performed in support of their program.

NIST does charge DoD and all other reimbursable customers a share of the operating and routine maintenance costs of the facilities. Capital improvements, however, are an appropriate expense of NIST appropriations. DoC Administrative Order 217-19 states that the use of a DoC facility by non-Commerce users be charged to the user on a full cost basis. Therefore, in compliance with the DAO, NIST charges users (Other Agency/reimbursable customers) a building depreciation surcharge and recovers depreciation over the useful life of the facility rather than having them share in the cost of construction or modification. These collections are returned to the Treasury.

In addition to identifying the **safety** and **system capacity** requirements addressed in this proposal, NIST formed a Facilities Technical Committee to solicit input from the laboratories on program-driven facilities needs -- **technical obsolescence**. Today's science requires a laboratory environment significantly different from that designed and built 25 years ago; air quality, filtration, temperature and humidity control, electrical power quality and reliability, vibration-free space, and inadequate fume hood ventilation are the areas where orders of magnitude improvement are necessary to meet the needs of today's measurement technology. NIST then contracted with an independent architectural and engineering firm (Smith, Henchman and Grylls Associates) to study the Institute's facilities deficiencies in the area of **technical obsolescence**. That firm is preparing a Capital facilities review to characterize these needs. That review will be the basis of a proposal to upgrade NIST facilities to meet the more stringent building environment requirements of today's science.

Research Grant Programs

Dr. Lyons, NIST has now made its first awards under the Advanced Technology Program and also has just selected two new Manufacturing Technology Centers.

QUESTION:

Have the selection process that you used for these two programs worked well, and has industry shown a real interest in these external programs?

ANSWER:

The selection process for the first Advanced Technology Program (ATP) competition worked exceedingly well. Over 400 technical and business experts from NIST, other

Federal agencies, and the private sector participated in the review of proposals. Two hundred forty-nine proposals were submitted, and 11 awards were made, including proposals from 5 joint ventures and 6 single business applicants. The awards covered a broad spectrum of technologies including flat panel display manufacturing, x-ray lithography, high temperature superconductivity, lasers, computer memory and data storage, machine tool control, and computer recognition of natural handwriting. Three of the award winning joint ventures were formed specifically to apply for ATP funding. Feedback from the private sector concerning these choices has been favorable and general interest in the program has been very high. We have developed a mailing list of approximately 4,000 potential applicants for use in future competitions. The ATP staff has responded to over 5000 telephone inquiries from the private sector during the last year.

The selection process for the second Manufacturing Technology Centers (MTC) competition also worked extremely well, with twenty separate proposals from non-profit institutions in eighteen states. The MTC selection process included an independent evaluation by a panel of the National Research Council and site visits by a NIST team to four finalists before the final selection of the two organizations to establish regional centers this year.

The increased overall proposal quality and extent of financial commitments made this selection process more challenging than the first. Based on feedback from many of the unsuccessful applicants we anticipate that next year's competition for one additional regional center will be even more demanding.

There has been a high level of industry interest in the MTC program, during the proposal solicitation and evaluation processes and after the MTCs have been selected. At each proposal site, significant numbers of high-level company representatives made presentations to the review team. The Great Lakes Center reported for 1990: contacts with 2,855 new companies; 312 plant visits; and 26,300 participants in trade shows, public forms, and professional organization meetings. It completed 50 major technology transfer projects with a value estimated by the client companies of $80.8 million.

In-House vs. Extramural Research

The Council on Competitiveness testified before my Commerce Committee last month and said "the Federal government should view support of generic industrial technology as a priority mission." The administration has proposed increases for NIST's internal programs, which is good, but it has proposed no increases from external research.

QUESTION:

How was that decision made? Did you request increases for extramural research as well?

ANSWER:

NIST's intramural research and services are extremely important to U.S. competitiveness. Because of the rapid growth in technology coupled with zero real growth in NIST's budget for the 15 years prior to FY 1991, NIST's limited resources restrict its ability to address a rapidly growing number of important measurement and standards issues in support of U.S. industry and commerce. These same programs will also expand NIST's ability to perform generic applied research and technology development.

The newer extramural programs are also very important but experimental. These programs are appropriate for NIST because of its unique mandate to promote industrial competitiveness. NIST must maintain a balance between its intramural and extramural programs. A healthy research base at NIST is crucial for providing the intellectual base for the technology transfer programs, keeping them informed and using the latest information and techniques. A broad program of research, coupled with NIST's extensive interactions with industry via its laboratory programs are necessary to underpin the extramural and technology transfer programs. Without the expertise developed through the intramural programs at NIST, the extramural programs could not achieve the desired results to help American industry improve its competitive position in the world marketplace.

The FY 1992 extramural request shows a decrease due in part to the availability of prior year carry-over funds to offset FY 1992 requirements. The budget does reflect growth in the MTC programs of one additional center for a total of six and $35.9 million for the Advanced Technology Program to continue at the FY 1991 level. During FY 1991 the ATP program grew by $25.9 million from the $10 million first appropriated in FY 1990. Both programs are still in the experimental stages, and future growth will be considered after progress through FY 1992 is evaluated.

QUESTION:

What are you going to do to persuade the President to make industrial technology a priority mission?

ANSWER:

The President's FY 1992 budget demonstrates the high priority placed on generic industry-related research and development. The NIST budget for fiscal year 1992 represents a fifteen percent increase over 1991 and a near doubling by 1996 for NIST to carry out research and development which supports standards development and advanced measurement techniques, both of which are critical to improving product quality, allowing for effective use of new technologies and improving public safety. The President's budget proposal continues an effort begun in the 1991 budget to expand NIST's ability to perform generic applied research and technology development and to address a rapidly growing number of important standards and measurements issues.

QUESTIONS SUBMITTED BY SENATOR DALE BUMPERS

QUESTION:

Once again, the President has proposed elimination of the State Technology Extension program. In light of the vital need to bolster the competitiveness of American industry, why do you persist in trying to kill this proven and effective program, while you have sought funding for similar programs such as the Hollings Manufacturing Centers?

ANSWER:

The State Technology Extension Program was zeroed out in our FY 1992 budget request because the Administration wants to concentrate on the ATP and MTC programs. In many ways these programs are complementary.

QUESTION:

I think that you will agree with me that the level of non-military research and development in the U.S. is not what it should be. I invite your comments on the need to improve non-military R&D and the role that the federal government can play in stimulating and providing incentives for private sector research and development?

ANSWER:

To make the best use of U.S. technology it is necessary to maintain a strong science and technology base, to foster a healthy economic environment conducive to innovation and diffusion of new technologies, and to develop mutually beneficial international science and technology relationships. Federal laboratories as well as industry contribute to the non-military science and technology base, while industry makes the investments necessary to turn this knowledge base into commercial products and processes. The role of the federal government is to support research directly (for example by proposing increases in the NIST budget) and indirectly (through tax and other incentives for private sector R&D investment). Government provided incentives should include creating an environment conducive to technological competitiveness by ensuring that technology concerns are factored into the formulation of fiscal, monetary, trade, and environmental policies. The government should also strive to encourage private technology-related investment through federal monetary and fiscal policies.

QUESTIONS SUBMITTED BY SENATOR WARREN RUDMAN

Facilities Retrofit

QUESTION:

You are requesting $5 million for facilities maintenance and repair for fiscal year 1992, an increase of $4 million. I understand this is part of a $27 million, 5-year effort. What needs have driven this request? If we are able to provide $5 million for 1992, will we be required to provide the full $7 million that is projected for 1993, or are these projects separable?

ANSWER:

NIST facilities in Gaithersburg, MD and Boulder, CO are 25 and 35 years old respectively. The $27 million, 5-year effort this increase supports addresses the **safety** and **system capacity** requirements of NIST's physical plant. The $5 million FY 1992 request will increase to $7 million in FY 1993 and continue at that annual level. The projects are separable, but reducing the annual level below the request will delay the effort needed to address these deficiencies.

The **safety** of NIST's facilities affects the health and well-being of three thousand employees and hundreds of guest scientists and visitors as well as the residents and workers of nearby areas in Gaithersburg and Boulder. The laboratories must be retrofitted to operate in accordance with a wide range of regulations (EPA and OSHA) which have, in recent years, become increasingly tight as health and safety hazards are better understood. NIST is facing a number of mandated, expensive replacements and repairs, including underground storage tanks, fire safety retrofits, electrical transformers and powers lines, and alarm systems.

In addition, the demand for utilities (cooling, heat, and electrical service) essential to the conduct of NIST's science and engineering research is beginning to exceed the **capacity** of the existing systems. The most pressing of these needs is increased capacity for the Gaithersburg chilled water system which provides cooling for laboratories and energy-intensive laboratory equipment as well as general air conditioning. This equipment includes the mainframe computer which serves not only NIST's two sites but also five laboratories of the National Oceanic and Atmospheric Administration. In Boulder, laboratories performing cutting-edge research in cryoelectronics and lightwave metrology need higher levels of electrical power than existing transformers can provide. Additional power is also needed for semiconductor processing facilities needed for development of microwave standards based on integrated circuits and for research in integrated optical components.

The projects to be undertaken as part of the 5-year facilities plan are listed on the attached table. The plan was designed with both safety and capacity priorities and procurement constraints in mind. These are our most critical needs.

In addition to identifying the **safety** and **system capacity** requirements addressed in this proposal, NIST formed a Facilities Technical Committee to solicit input from the laboratories on program-driven facilities needs -- **technical obsolescence**. Today's science requires a laboratory environment significantly different from that designed and built 25 years ago; air quality, filtration, temperature and humidity control, electrical power quality and reliability, vibration-free space, and inadequate fume hood ventilation are the areas where orders of magnitude improvement are necessary to meet the needs of today's measurement technology. NIST then contracted with an independent architectural and engineering firm (Smith, Henchman and Grylls Associates) to study the Institute's facilities deficiencies in the area of **technical obsolescence**. That firm is preparing a Capital facilities review to characterize these needs. That review will be the basis of a proposal to upgrade NIST facilities to meet the more stringent building environment requirements of today's science.

Lightwave Technology

QUESTION:

The 1992 budget assumes a major increase of $2.4 million in NIST's research program on lightwave measurement technology, or fiber optics. What are the elements of this increase, and what benefits can accrue to U.S. industry from the work you will perform?

ANSWER:

This $2.4 million increase, coupled with funding in fiscal years 1987, 1988, 1989, and 1991, will enable NIST to provide significantly expanded measurement support for the opto-electronic components used in optical fiber communications systems. Specifically, this increase will complete funding for modulators and couplers and fully fund measurement for hybrid and integrated-optic circuits and related opto-electronic materials characterization. All of this new measurement capability will enable U.S. industry to develop and manufacture new components with increased performance at reduced cost for improved competitiveness.

Advanced Semiconductor Measurement Technology

QUESTION:

One of the largest increases proposed in the NIST budget for fiscal year 1992 is $4 million for advanced semiconductor measurement technology. What is the role of NIST in developing advanced semiconductors, and how does it differ from research in this area that is being performed by the private sector? What benefits can accrue to U.S. industry from the NIST program?

ANSWER:

NIST's role in developing advanced semiconductors:

NIST's role is to provide the necessary measurement science and technology for the development and manufacture of semiconductor devices and of the equipment and materials used in semiconductor manufacturing. NIST does not develop semiconductor devices, equipment, or materials *per se*.

For example, NIST has developed methods of measuring the electrical properties of silicon and gallium arsenide wafers, dimensions of the fine features of patterns on masks and wafers, thicknesses and properties of thin films grown or deposited on wafers, and electrical and thermal properties of finished devices, among others.

These measurement methods are necessary for specifying the properties of purchased materials (silicon, photomasks) and equipment (does the machine produce a thin film with the specified properties or not?), for controlling process steps, and for evaluating the finished semiconductor device.

NIST's role compared to research being performed by the private sector:

Companies focus on research and development needed to design and manufacture new products. They generally do not address measurement problems in any substantive way, but try to work around them. For a company, resources spent on measurement problems are resources not available for product development. Universities usually do not work on measurement problems either, largely because solving the problems requires more time than is available for a graduate student's research and the broad range of expertise required does not exist at a university.

There are three principle characteristics of NIST which -- taken together -- enable NIST to do what industry cannot do or does not do.

> First, NIST impartiality is widely acknowledged. NIST is not a buyer or a seller, and NIST has no biases that favor buyers or sellers. NIST is not a regulatory agency, so it poses no threat to industry. NIST protects proprietary information.
>
> Second, NIST's competence in measurement capability is widely acknowledged by U.S. industry, by domestic and international customers, and by international regulatory organizations whose rulings affect the access of U.S. products to international markets.
>
> Third, NIST bears the imprimatur of the U.S. Government as the lead agency for measurments.

These three characteristics combine to give NIST two capabilities critical to its role: access and acceptance.

Benefits to U.S. industry from the NIST program:

NIST solves measurement problems generically and delivers the results to a variety of firms and industries. It is not necessary for each company to do the work independently. This saves money, and assures that every company uses the same scientifically verified, underlying measurement techniques. It also avoids difficulties in the marketplace that result when buyer and seller use differing measurement methods.

Integrated circuits are becoming much more complex because individual details of the circuit are becoming smaller and smaller. Properties such as dimensions of features in patterns and thicknesses of films are correspondingly harder to measure. The chemical purity of all materials must be improved; smaller structures are more sensitive to contaminants. Measurement technology is being pressed to its physical limits at the same time that processes are becoming more expensive to execute. Process control is thus more difficult and more necessary if manufacturing costs are to be contained. Failure in this regard means that companies cannot be competitive.

Two current industry trends are driving NIST to provide both a larger range of measurements and more accurate ones. A much wider spectrum of science and technology is being used in semiconductor manufacturing now; this trend will only intensify in the future. More accurate measurements are necessary for effective technology transfer and process control. Companies need to move technology from R&D to manufacturing, or from one plant location to another. Technology must flow from cooperative R&D organizations such as Sematech to member companies. In the past, a reproducible but not necessarily accurate measurement was sufficient to control a manufacturing process in a single location. Now, with greater needs for technology transfer, accurate measurements are required. These two trends present a major challenge to NIST that require a substantially increased level of effort.

Manufacturing Standards for the 21st Century

QUESTION:

NIST is requesting $1.5 million for something called "Manufacturing Standards for the 21st Century." What are the elements of this program?

ANSWER:

For $1,556K in FY 1992 we are going to start on a large and very complicated effort to develop product data exchange standards that will improve productivity and competitiveness of manufacturing as we move into the twenty-first century. The international standard is called STEP, an acronym for "Standard for the Exchange of Product Model Data." The effort to develop and implement STEP in the U.S. is called PDES, "Product Data Exchange using STEP." STEP is a standard for the digital representation of product information and for the exchange and sharing of product information among dissimilar computer systems.

However, STEP is more than just a standard; it is a pioneering effort that includes the research and development of the information technology necessary for the envisioned shared-database environment. Once this standard and its environment are in place, all types of enterprise information can be easily standardized and shared. Successful implementation of STEP by U.S. software vendors and U.S. manufacturers will mean faster new product development, increased quality control, lower costs, higher productivity, and expanded customer support. In short, STEP will mean a competitive advantage in global markets.

As we move into the twenty-first century, new manufacturing technologies are needed to improve productivity and competitiveness. In this information and computer age, companies exchange and share information across the country. This capability is needed for manufacturing the complex products such as automobiles, airplanes, ships, and buildings that are produced today. Manufacturers require the ability to store and retrieve and share enormous amounts of product data, far beyond the capability provided by paper documents and drawings. STEP will enable the processing of product data through computer-based techniques that allow for shared access among automated systems.

STEP will permit all interested parties--including design, production, maintenance, repair, marketing, and distribution--to contribute and to share product-related information using different kinds of computers. In effect, STEP will allow numerous specialists to cooperate as a team on the manufacturing of a product without leaving their workstation or office.

NIST is a major participant in STEP development. NIST provides technical expertise and managerial support to industry's efforts through the National PDES Testbed, leadership roles in standards organizations such as ISO and the IGES/PDES Organization, associate membership in the industry consortium PDES, Inc., and participation in a variety of other technical activities in support of STEP development. NIST scientists and engineers consider the emerging, precompetitive, generic, STEP technology to be critical to U.S. industry competitiveness.

Program Elements:

The planned NIST program elements include basic and applied research, the development of prototypes and demonstrations, and the development of testing methods and certification programs for the new product data exchange technology.

Basic and applied research. The immediate requirement for the implementation and commercialization of STEP-based manufacturing systems is a shared database that will allow the unambiguous description of product characteristics. NIST will work to develop the computer architecture for supporting product data sharing, the advanced information modeling languages and software tools to support information standards development, the modeling and information techniques for unambiguously describing the characteristics of manufactured products, and the advanced database technology to support product data sharing.

Prototypes and demonstrations. NIST will develop an experimental testbed facility for application prototype testing that will demonstrate small batch manufacturing using STEP data. The testbed will be used to integrate STEP software tools, commercial databases, and commercial manufacturing applications into a prototype small-scale manufacturing environment. NIST will work with industry and universities, study the standards issues, and implement prototype solutions to illustrate how STEP-based manufacturing applications can be achieved through the use of shared product data. Demonstrations will show how a designer can develop a product specification using information available from other enterprise processes such as production and support. In addition, product data will be shown as driving many of the processes in a mechanical product manufacturing facility.

Testing and certification programs. NIST will develop validation testing methods to ensure that the emerging STEP is usable, functional, complete and consistent. The emphasis will be on the development of computer-assisted tools for testing and evaluating proposed application systems. In addition, conformance testing procedures will be developed. Conformance testing helps assure conformity to the standards as well as interoperability of different commercial products. The results and recommendations generated by validation and conformance testing will be fed back to standards organizations for review and action. This will help the standardization process proceed and will encourage implementations of information systems that use STEP. NIST intends to help establish a network of testing sites on a Product Data Exchange Network.

Benefits of the Increased Funding:

The NIST PDES/STEP manufacturing research and development effort is currently funded by the Department of Defense Computer-aided Acquisition and Logistic Support Program. The additional $1,556K per year will enable NIST to focus more on the commercial interests of U.S. industry and to broaden efforts to meet the needs of the industrial community that NIST serves. It will provide NIST greater resources to accelerate the needed development of technology and the implementation of STEP, as well as other manufacturing standards. Specifically, the increased funding will be used by NIST to strengthen the growing research and development and standards validation testing activities at NIST. It will partly support the management of the PDES/STEP program, including working with and coordinating a proposed network of organizations dedicated to support the specification, validation, prototyping, commercial development, and transitioning to STEP. The network will help accelerate the realization of STEP and will help ensure that STEP will function as intended in actual manufacturing environments. The increased funding will contribute to greater NIST participation in technical standards activities within the international standards community.

Reimbursable Programs

The National Institute of Standards and Technology is requesting $195.3 million for its internal budget for fiscal year 1992. However, NIST also receives funding from outside sources, including the Defense Department. The reimbursable budget for fiscal year 1992 is expected to be $152.6 million.

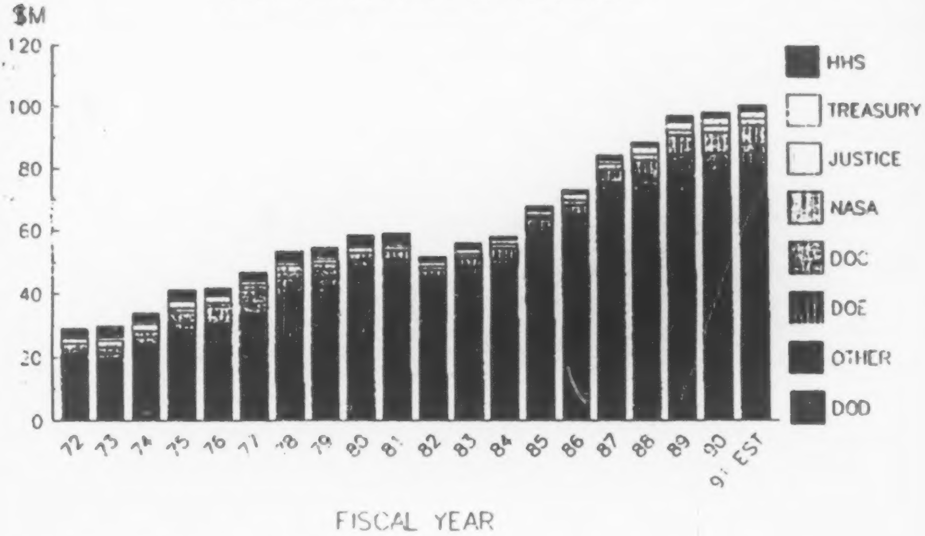
QUESTION:

To what extent are budget reductions in the Defense Department and other Federal agencies affecting the reimbursable budget of NIST?

ANSWER:

At present, funding from the Department of Defense is below last year's level. Part of this has been caused by Defense's cutback in the Strategic Defense Initiative which has resulted in a lower level of effort in the Physics Laboratory at NIST. Additionally, there are, of course, fluctuations in the reimbursable funding levels of many of our various technical units. However, while a particular technical unit may experience a decline in the funding from one sponsor, there may be increases in the funding from other sponsors. In spite of these fluctuations, at present, our overall reimbursable program is comparable to previous years' levels and we are hoping it will remain so. (See attached graph.)

NIST OTHER AGENCY FUNDING
FY 1972 - 1991
CURRENT DOLLARS IN MILLIONS



*FY 91 estimate is based on authorization as of mid-year 1991 (March 23, 1991)

QUESTION:

Are reductions in reimbursable programs adversely affecting the programs appropriated by the subcommittee?

ANSWER:

The NIST programs supported by appropriations are not adversely affected by the level of reimbursable work at NIST. The unique measurements and standards expertise developed with appropriated funding gives NIST the capability to perform services on a reimbursable basis. NIST performs work for other agencies in areas of NIST competence in those cases where the other agencies request assistance in applying NIST output to their problems and where the private sector cannot adequately supply the research or service. Our reimbursable work supports the overall federal mission. It supplements and fosters our appropriated programs and our goal is to maintain an overall balance, consistent with good management, between other-agency and directly appropriated funds used to support internal operations.

QUESTION:

Are some of the NIST budget initiatives for fiscal year 1992 replacements for lost funding in the reimbursable budget? Are they complementary to some reimbursable work?

ANSWER:

The NIST FY 1992 budget initiatives are not replacements for lost funding in the reimbursable budget. Excluding fiscal year 1991, the NIST budget has been essentially flat over the last 15 years. Our budget request for 1992 contains important increases needed to address a rapidly growing number of important measurement and standards issues in support of U.S. industry and commerce. Once NIST's measurement and standards expertise has been developed in these areas, NIST can accept other agency work based on an established set of criteria which include (1) the need for traceability of measurements to national standards;(2) the need for work which cannot or will not be addressed by the private sector; (3) work supported by legislation that authorizes or mandates certain services; (4) work which would result in an unavoidable conflict of interest if carried out by the private sector or regulatory agencies and (5) requests by the private sector for NIST action or services. It is our goal to maintain a reasonable balance between appropriated and reimbursable funding with the proper appropriated research level needed to generate the skills of interest to other agencies and against financial reliance on sponsors that could draw our research programs away from our mission towards abilities only of narrow use to the other agencies. This ensures that our reimbursable programs are complementary to our appropriated programs and not vice versa.

SUBCOMMITTEE RECESS

Senator HOLLINGS. But I want you to know you are very important to us. We thank you very much, Dr. Lyons, you and your associates. We will recess until Thursday, April 11 at 10 o'clock, when we will hear from Robert Bonner, the Administrator of the DEA, the Drug Enforcement Agency.

Thank you.

[Whereupon, at 11:29 a.m., Tuesday, April 9, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, April 11.]

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